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الأفريقية بالإسكندرية

حكم هيئة تحكيم طابا

دراسة تحليلية موثقة لأهم جوانبه

القاهرة
١٩٩٠

أهــــــــداء

الــى روح الدكتــــور وحيــد رأفــت

الـــذى ضــحى بحيـاتـــه

حتى تكسب مصر قضية طابــا

قائمـــة المحتـــويات

مقـــدمة

الفصل الاول

الفصل الثانى

الفصل الثالث

خاتمــــــــة

الملحق الاول

المحلق الثانى

الملحق الثالث

(أ) مضبطة محضر مرافعة البروفسور باوت فى شأن علامة الحدود رقم ٩١ خلال المرحلة الاولى من المرافعـات الشـفوية ٠

(ب) مضبطة محضر مرافعة البروفسور باوت فى شأن علامة الحـدود رقم ٩١ خلال المرحلة الثانية من المرافعات الشفوية ، مع البيان الختامى للدكتور نبيل العربى ٠

مقـدمـة

١ ــ منذ أواخر عام ١٩٨١ بدأت تتضح معالم خطة اسرائيلية لعرقلة تنفيذ المرحلة الأخيرة من مراحل الانسحاب الى ما وراء حـدود مصر الدولية الفاصلة بين سيناء والاراضى المجاورة التى كانت داخلة فى السابق ضمن فلسطين كما تحددت معالمها فى ظل الانتداب البريطانى (١٩٢٢ ــ ١٩٤٨) •

فالملاحظ أن اللجان الفنية المشكلة بالتطبيق للقواعد التى أوردتها نصوص معاهدة السلام المصرية الاسرائيلية وملاحقها كانت تقوم بأداء مهامها على نحو مرضى فى ارساء علامات حدود وفقا لنموذج اتفق عليه وذلك فى ذات المواقع التى كانت العلامات القديمة قد أقيمت عليها • وكان قد تم بالفعل اعداد غالبية البطاقات الوصفية والتوقيع عليها من الجانبين وارساء العلامات فى أماكنها المحددة •

٢ ــ بيد أنه فى أعقاب اغتيال الرئيس الراحل أنور السادات ظهرت عدة بوادر مزعجة تدل على أن اسرائيل فى صدد رسم سياسة جـديدة تستهدف افتعال نزاع حول أماكن عـدد من العلامات ذات الاهميـة الخاصة • وتمثلت تلك البوادر على وجه التحديد فى قيام أعضاء اللجنة الفنية الاسرائيلية بسحب الموافقات التى كانوا قد أعطوها فى اجتماع سابق على مواقع العلامات الواقعة فى منطقة رأس النقب ذات الاهمية الاستراتيجية البالغة باعتبارها أعلى منطقة يسهل منها النزول الى مدن القناة والسيطرة على كامل شبه جزيرة سيناء وتفصلها عـن الاراضى المقابلة على الجانب الاسرائيلى أخاديد ومنخفضات تجعل الصعود اليها مسألة عسيرة عسكريا •

وتم سحب الموافقات بزعم صدور أوامر من جهات اسرائيلية أعلى اعتبرت أن أعضاء اللجنة الفنية الاسرائيلية قد أخطأوا عندما أقـروا بمواقع العلامات القديمة القائمة فعلا منذ فترة الانتداب البريطانى على

فلسطين ، ورفض أعضاء الفريق الاسرائيلى التوقيع على البطـاقات الوصفية التى كان قد تم اعدادها تمهيدا لاعتمادها نهائيا • وتأكدت معالم السياسة الاسرائيلية الساعية الى تعطيل الانسحاب عن بعض المناطـق الواقعة داخل الحدود الدولية المصرية عندما وصلت أعمال اللجنة الفنية الى العلامة الاخيرة التربية من خليج العقبة فى منطقة طابا ، حيث تجاهل الجانب الاسرائيلى المكان المشار اليه فى أعالى التلال الواقعة شمالا رغم وجود آثار واضحة لمخلفات العلامة القديمة وزعموا أن الحدود انمـا تقع عند أشجار الدوم بقرب بئر طابا جنوب الوادى بجوار الطـريق الساحلى المؤدى الى ذهب ونوبيع • ورفض الجانب المصرى هذه المزاعم الظاهرة الفساد •

٣ ــ وعندما اتضح ان حل الخلافات المثارة حول العلامات المذكورة سواء فى منطقة رأس النقب أو عند شاطىء طابا لم يعد ممكنا على مستوى ضباط الاتصال للجانين تم رفع الامر الى القيادات السياسية فى البلدين لمحاولة احتواء الازمة وحل الخلاف بالطرق الودية •

وبالفعل تمت اتصالات أسفرت عن اجتماع بين وزير الدفاع المصرى حينذاك الفريق كمال حسن على ونظيره الاسرائيلى الذى كان قد عين حديثا فى منصبه وهو الجنرال أريل شارون خلفا للجنرال وايزمان • وتفاصيل ما دار فى هذا الحديث واردة فى الشهادة التى أدلى بها الفريق كمال حسن على أمام هيئة التحكيم والمنشور نصها كاملا فى الملحق رقم(١) لهذا الكتاب ، وهى شهادة تنطق بالصدق والثقة بالنفس كان لها أبلغ الاثر فى أذهان وضمائر رئيس وأعضاء هيئة التحكيم لاستظهار حقيقة ما حدث خلال تلك الفترة الحرجة التى تميزت بتحرك سريع حتى يتم الانسحاب النهائى من كامل سيناء فى الموعد المقرر بمقتضى معاهدة السلام وهو ٢٥ ابريل ١٩٨٢ •

٤ ــ ازاء اصرار اسرائيل على موقفها تم البحث عن حل مقبـول يسمح بانجاز الانسحاب الاسرائيلى فى الموعد المذكور عـن الاراضى

الواقعة بين علامات غير متنازع عليها مع البحث عن وسيلة مقبولة لحل الخلافات القائمة حول العلامات المعلقة دون حسم •

وبمعاونة حكومة الولايات المتحدة الامريكية بوصفها طرفا مشاركا فى المفاوضات التى أسفرت عن ابرام معاهدة السلام وبحكم الدور الذى تؤديه بالنسبة للقوات المتعددة الجنسيات المعهود اليها بمهام معينة فى اطار الالتزامات الناشئة عن تلك المعاهدة ، توصل الاطراف الثلاثة فى ذات يوم ١٩٨٢/٤/٢٥ المحدد للانسحاب النهائى الى اتفاق مبدئى ذى طبيعة اجرائية مؤقتة مقتضاه أن تتحرك قوات كل دولة من الدولتين المتنازعتين الى الخطوط التى عينها الطرف الآخر ، بمعنى أن يتم سحب الوجود العسكرى الاسرائيلى الى ما وراء الخط المؤقت الذى حددته اسرائيل بحيث تكون المسافة بين الخطين واقعة فى نطاق نشاط القوات المتعددة الجنسيات مع ما يستتبعه ذلك من بقاء المنشآت السياحية فى منطقة طابا مفتوحة للاسرائيليين وتحت ادارتهم •

ه ــ اطمئنانا لاهمية الميزة النسبية التى حققتها اسرائيل نتيجة للاتفاق المذكور وما اقتضاه من عودة السلطات المصرية الى ما وراء النقاط المتنازع عليها انتظارا للحل النهائى ، سعت السياسة الاسرائيلية الى ابقاء ذلك الامر الواقع الملائم لمصالحها لاطول مدة ممكنة عن طريق اطالة المفاوضات والاصرار على ضرورة الالتجاء أولا الى التوفيق الذى لايفرض حلا وانما يتوقف مصيره على قبول الطرفين للحل الوسط المقترح من الوسيط المكلف بالتوفيق قبل الانتقال الى مرحلة التحكيم الاجبارى الذى ينقل زمام الحل النهائى الى قضاة يختارهم الطرفين ويصدورن حكما الزاميا ونهائيا حاسما للنزاع •

وادراكا لتلك النوايا الاسرائيلية أصرت القيادة السياسية المصرية على ممارسة كافة الضغوط الممكنة لتكثيف الجهود الساعية للوصول الى مشارطة تحكيم دون اضاعة للوقت فى اجراءات توفيق ينتهى بتوصية غير ملزمة للطرفين المتنازعين •

٦ – ونتيجة جهود تستحق التقدير والاعجاب استطاعت الدبلوماسية المصرية الوصول فى ١١ سبتمبر ١٩٨٦ الى الحصول على مشارطة تحكيم تحقق للجانب المصرى الهدفين الاساسين الذين سعى لانتزاعهما خلال مفاوضات مضنية استمرت سنوات ، وهو : (أولا) الزام الحكومة الاسرائيلية بتحكيم يتم وفقا لجدول زمنى محدد بدقة ، و (ثانيا) تحديد مهمة هيئة التحكيم على نحو لا يسمح بأية مناورات أو مفاجآت ، اذ يقوم كل طرف بتحديد الموقع الذى يتمسك به بالنسبة لكل علامة من العلامات الاربعة عشرة المتنازع عليها عن طريق بطاقات وصف موقع عليها وملحقة بمشارطة التحكيم ، وعلى أن تكون المهمة الوحيدة المسندة لهيئة التحكيم هى تثبيت الموقع الذى تراه صحيحا وترفض الموقع الذى اقترحه الطرف الآخر ، بمعنى أن هيئة التحكيم لاتكون لها سلطة تعيين موقع لعلامة لم يقم أى من الطرفين بابرازه فى بطاقات الوصف الملحقة بالمشارطة •

٧ – بعد استكمال تشكيل هيئة التحكيم برئاسة القاضى السويدى جونار لاجرنجن الرئيس السابق للمحكمة العليا باستكهلم وللمحكمة التى تنظر المنازعات الايرانية الامريكية فى لاهاى ، وبعضوية كل من : بيير بيليه الرئيس الاول الفخرى لمحكمة النقض الفرنسية والرئيس السابق للغرفة الثانية بالمحكمة الايرانية الامريكية ؛ وديتريش شيندلر أستاذ القانون الدولى بجامعة زيورخ السويسرية ، والاستاذ الدكتور حامد سلطان المحكم المصرى الغنى عن التعريف ، والسيدة / روث لابيدوت أستاذة القانون الدولى بجامعة تل أبيب ؛ عقدت الهيئة جلسة أولى للاجراءات فى ١٠ ديسمبر ١٩٨٦ • وبمقتضى القواعد التى تقررت بتلك الجلسة استبعدت هيئة التحكيم فكرة أن يبدأ أحد الطرفين بتقديم مذكرته الكتابية الاولى بوصفه مدعيا ، ويعقب ذلك الطرف الآخر بوصفه مدعى عليه حسبما هو مألوف فى الاجراءات المعتادة للتقاضى ، وانما صار الاتفاق

على قاعدة مغايرة مقتضاها أن يقوم الطرفان معا وفى ذات التـاريخ بايداع مذكراتهما الكتابية ، وذلك بحيث يتم التبادل على مراحل ثلاث متعاقبــة •

وبالفعل استغرقت المرحلة الكتابية فترة تقرب من ١٤ شـهرا ، اذ قـام كل من الطـرفين فى ١٣/٥/١٩٨٧ بايداع مذكـرته الأولى (Memorial) التى يشرح فيها وجهة نظره والحجج المساندة لذلك مع المستندات المؤيدة ، وفى ١٢/١٠/١٩٨٧ أودع كل جانب مذكرة ثانيــة (Counter Memorial) يتناول فيها بالرد ما كان الطرف الآخر قد أورده فى مذكرة دفاعه السابقة مع تقديم المستندات التكميلية ، وأخيرا انتهت مرحلة المذكرات الكتابية بالتعقيب الختامى (Rejoinder) الذى يحدد الصورة النهائية للطلبات والأسانيد القانونية والواقعية فى ضوء ما تم تبادله من مذكرات وكافة الوثائق والمستندات التى يرى كل طـرف لزوم طرحها على المحكمة • وقد تم ايداع وتبادل المذكرات الختامية فى ١/٣/١٩٨٨ ، وكانت هيئة المحكمة قد قامت بزيارة ميدانية للنقاط المتنازع عليها خلال شهر فبراير عام ١٩٨٨ •

٨ — وتجدر الاشارة فى هذا الشأن الى أن وزارة الخارجيــة المصرية قد عهدت بمهمة اعداد المذكرات الكتابية وملاحقها مع من تحتويه من وثائق وخرائط الى لجنة دفاع تميزت بأنها تضم أشخاصا تباينت تخصصاتهم ، فمنهم الأستاذ فى القانون المشتغل بالتدريس الجامعى ورجل القضاء والممـارس القانونى الذى صقلته التجارب العملية فى مجال التحكيم الدولى ، ومن بينهم أستاذ التاريخ والجغرافى ورجـل المساحة العسكرية والطوبوغرافى ، ولكنهم جميعا يشكلون فريقا متجانسا متكاملا على نحو يغطى مختلف جوانب القضية •

وفى ذات الوقت ، فان الحرص على أن تكون قيادة الفريق ورسم خطى مسيرته فى أيدى مصرية قادرة ، لم يمنع من الالتجاء الى ضـم ثلاثة من غير المصريين للاستفادة من خبرتهم النادرة للوصول بمذكرات

الدفاع الى أعلى المستويات وفقا للمعايير العالمية ، ليس فقط من حيث الموضوع ، وانما أيضا من ناحية الأسلوب العلمى والعملى لطـرح الأدلة وفقا لقواعد الاثبات الدولية ودقة التعبيرات اللغوية حتى يجىء الاعداد الفنى والاخراج متميزا • وهذه المجالات انفرد باتقانها كبار رجال القانون الانجليزى والأمريكى بالتعاون مع المكاتب عبر الدولية المتخصصة التى تملك بالاضافة الى الخبرة الفنية الوسائل التكنولوجية الحديثة القادرة على طبع ما يربو على ألفى صفحة فى يوم واحد وادخال أية تعديلات مطلوبة فى دقائق بحيث يأتى الناتج النهـائى فى صورة مرضية تستهوى القارىء وتسهل مهمة المحكم • وهذا ما تحقق فى شأن المذكرات المصرية الثلاثة التى جاءت فى نهاية المطاف عملا مشرفا حتى لو نظرنا اليها حسب المعايير الدولية الأكثر تشددا •

٩ — وكانت مشارطة التحكيم قد راعت أنه بعد أن يكون كلا من الطرفين قد أحاط بوجهة نظر الآخر من خلال الشق الأكبر من تلك المرحلة الكتابية ، من الممكن أن تتوافر فرصة لاعادة تقييم المواقف المتبادلة وايجاد تسوية ودية للنزاع كله أو بعضه • ولذلك ، استحـدث نص المـادة التاسعة من المشارطة أسـلوب دمج محاولة التـوفيق ضمن اجراءات التحكيم ذاته عن طريق غرفة تتكون من أحد المحكمين المحايدين وباشتراك كلا من المحكمين المصرى والاسرائيلية • وبالفعل قام رئيس هيئة التحكيم القاضى لاجرنجن بتعيين زميله الفرنسى بيليه ليتولى الدور المنوط بتلك الغرفة • ونظرا لأن مشارطة التحكيم قد أعطت لمحاولة التوفيق عن طريق تلك الغرفة الخاصة فترة زمنية محددة يجب أن تعلن فى نهايتها اما نجاحها أو فشلها فى مهمتها ، كما أن لقاءات القاضى بيليه بتفويض من زميليه مع ممثلى الجانبين المصرى والاسرائيلى لم تسفر عن أية نتيجة ايجابية تستحق المناقشة بواسطة الغرفة مجتمعةفقد قام بيليه باعلان عدم امكانية الوصول الى تسوية ودية للنزاع قبيل ايداع المذكرة الكتابية الختامية ، وبالتالى فقد تعين استمرار اجراءات التحكيم عن طريق الاعـداد لمرحلة المـرافعات الشفوية وسماع الشـهود من الجانبـين •

١٠ — وقد قررت هيئة التحكيم بالتشاور مع الطرفين تنظيم تلك المرحلة الشفوية الحاسمة عن طريق ترتيب دورين ، يبدأ أولها فى ١٤ مارس ١٩٨٨ وينتهى فى ٢٥ من ذات الشهر ، بينما يتم الدور الثانى المخصص للتعقيبات النهائية فى الفترة ما بين ١١ و ١٥ ابريل ١٩٨٨ . وعلى خلاف الايداع المتزامن فى ذات اللحظة للمذكرات الكتابية ، فمن غير المتصور أن يتكلم الطرفان فى نفس الوقت ، ولذلك لم تجد المحكمة بدا من استخدام أسلوب القرعة لتحديد من يكون البادىء والطرف الذى يعقبه فى الحديث . وجاءت نتيجة القرعة على أساس أن تبدأ مصر ، وهو وضع يعطى زمام المبادرة للجانب المصرى ، ولكنه فى ذات الوقت يخول الفريق الاسرائيلى ميزة نسبية حيث يحدد أسلوب المعالجة فى ضوء ما سبق أن سمعه .

١١ — وتجدر الاشارة الى أن تحكيم طابا كغيره من التحكيمات الهامة يتبع نظاما لتسجيل كل كلمة تقال فى قاعة الاجتماع واعداد مضابط لوقائع كل جلسة توزع فى نهاية كل يوم متضمنة كل ما قيل خلال اليوم ، ويتم تصحيح ما قد يكون قد ورد بالمضبطة من أخطاء مادية أو لغوية حتى تكون فى حوزة المحكمة والطرفين نسخ نهائية معتمدة يمكن الاعتماد عليها بكل ثقة خلال مرحلة المداولات . وعلى هذا الأساس تم تزويد القاعة فى مبنى بلدية مدينة جنيف بالمعدات الحديثة لتسجيل الاشرطة ، وكذلك استخدام الأشخاص ذوى الكفاءات العاليه تحت اشراف سكرتير المحكمة للتأكد من انجاز عملية طبع واخراج حصيلة ٦ ساعات من الجلسات الصباحية والمسائية التى تعقد كل يوم ، وذلك فى موعد أقصاه التاسعة مساء ذات اليوم حيث يتم توزيع المضابط حتى تكون فى حوزة المشاركين فى الجلسات للاعتماد عليها فى صباح اليوم التالى .

١٢ — وقد وجدت من المناسب ابراز هذا الجانب التنظيمى الهام لأنه يعطى القارىء فكرة مبدئية عن المناخ النفسى الذى يسود أجواء المرافعات الشفوية خلال التحكيمات الكبرى الذى يقتضى خبرة ومرانا ، خاصة واذا كانت اللغة الانجليزية ليست اللغة الأصلية للمترافع وكان

هذا الشخص يسعى لاجتذاب انتباه هيئة التحكيم عن طريق عـدم الاعتماد كلية على النص المكتوب الذى أعده سلفا لمرافعته حتى يحتفظ بالمرونة اللازمة لمواءمة ما يقوله مع ما يستشفه فى محاولة قراءة وجوه المحكمين وما عليها من اهتمامات أو للارتجال فى الرد اذا فاجأه رئيس الهيئه أو أحد أعضائها بسؤال أو استيضاح أثناء المرافعة . فمن المسلم فى فن القضاء والتحكيم الدولى أن أفدح الأخطاء التى يمكن أن يقـع فيها المترافع أن يلتزم بقراءة نص مكتوب ، حيث تفقد المرحلة الشفوية مبرر وجودها كمرحلة حاسمة ونهائية ، وتتحول الى مجرد « حصـة قراءة رشيدة » يتم فيها تلخيص ما قيل سابقا فى المذكرات الكتابية ، وهو ما يدعو الى الملل وربما الى فقد أعضاء هيئة التحكيم للقـدرة على التركيز خاصة وبمراعاة سنهم (ثلاثة من محكمى طابا كانوا قد تجاوزوا الخامسة والسبعين من عمرهم ويجلسون فى الصباح لمدة ٣ ساعات ثم يبدأون بعد الغذاء لمدة ٣ ساعات أخرى) .

١٣ — ولاعطاء صورة واقعية لمـا تم فى قضية طابا من مرافعات سواء فى الدور الأول خلال النصف الثانى من شهر مارس عام ١٩٨٨ بمدينة جنيف أو أثناء الدور الثانى والختامى فى ذات المدينة لمدة أسبوع واحد ما بين ١١ و ١٥ ابريل ١٩٨٨ ، فقد وجدنا من الأوفق ان نورد ضمن ملاحق هذا الكتاب تصويرا فوتوغرافيا لمحاضر الجلسات التى تم خلالها الترافع من الجانب المصرى بالنسبة لكل من العلامات الأربعة عشرة التى كانت محلا للنزاع . ذلك أن نصوص تلك المرافعات تعطى صورة كافية عن وجهات النظر التى كانت مطروحة على المحكمة وتمثل محصلة آخر ما استظهره المحكمون فى أذهانهم من عناصر قبل حجز القضية للحكم والشروع فى المداولات التى أسفرت عن صدور حـكم ٢٩ سبتمبر ١٩٨٨ موضوع الدراسة .

١٤ — ومن المعروف أن اسرائيل كانت قد استعانت بالاستاذ الانجليزى Elie Lauterpacht للترافع عنها بالنسبة للعـلامة ٩١ الواقعة قرب شاطىء طابا ، وذلك للاستفادة بخبرته الدولية المرموقه

بحكم مشاركته فى العديد من القضايا الدولية وتكوينه الأكاديمى فى جامعة كمبردج وعضويته لمجمع القانون الدولى •

وكان من المتعين والحال هذه مواجهته فى خصوص ذات العلامة ٩١ باستاذ انجليزى على ذات المكانة الدولية ان لم يكن أرفع مستوى وأكثر خبرة • وهكذا جاء أفضل اختيار للند القادر Derek Bowett الذى انتزع من لوترباخت كرسى الاستاذية فى مادة القانون الدولى بجامعة كمبردج عندما تنافس الاثنان على المقعد ، كما تخصص فى مباشرة عشرات القضايا الدولية التى كان فيها لوترباخت مدافعا عن الطرف الآخر وانتهت بأن باوت هو الذى خرج منتصرا ، حتى صارت من الأقوال المشهوره فى مداعبات أوساط المتخصصين آن لوترباخت لا يعانى الا من عقدة نفسية واحدة اسمها « دريك باوت » •

وقد تفضل البروفسور باوت فى لقاء أخير تم بيننا فى مدينة لندن يوم ١٩٨٩/٦/٨ وأعطانى اذنا بنشر مرافعته فى قضية طابا باعتبار أنه هو وحده الذى يملك حقوق الملكيه الأدبيه على نتاج ذهنه •

أما بالنسبة لنشر المرافعات المصرية المتعلقة بالنقاط الثلاثة عشرة الأخرى فانه لا مبرر للحصول على اذن بالنشر لأن كاتب هذه الدراسة هو الذى تولى شرف الترافع بشأنها عن الجانب المصرى •

١٥ — ولا يفوتنا أن ننوه الى أن عددا آخر من الزملاء أعضاء فريق الدفاع كانوا قد أسهموا فى المرافعات الشفوية دفاعا عن وجهة النظر المصرية •

ففى الدور الأول بدأ السفير الدكتور / نبيل العربى المرافعات المصرية فى الجلسة الصباحية يوم ١٩٨٨/٣/١٥ بكلمة افتتاحية حدد فيها موقف مصر بوصفه ممثل الحكومة (Agent for the Lyovernment) وأعقبه فى ذات الجلسة الصباحية الاستاذ الدكتور / جورج أبى صعب الذى قام بشرح التفسير المصرى لمهمة المحكمة وأن دورها يقتصر على

تحديد أين كانت تقع العلامات خلال الفترة الزمنية الواجب أخذها فى الاعتبـــار Critical Period ، وهى فترة الانتداب البريطانى ما بين ١٩٢٣ و ١٩٤٨ باعتبار أن معاهدة السلام قد نصت على وجوب انسحاب اسرائيل الى ما وراء حدود مصر الدولية المعترف بها والقائمة حينذاك ، وتلاه الخبير البريطانى سير ايان سنكلير المستشار القانونى السابق لوزارة الخارجية البريطانية الذى انضم منذ البداية الى فريق الدفاع وقام بدور بارز فى الحصول على الوثائق التاريخيـــة من دار المحفوظات البريطانية والجمعية الجغرافية الملكية وغيرها من المصادر الهـــامة •

فقد بدأ سير ايان سنكلير شرحه للأصول التاريخية للنزاع المطروح على التحكيم مدعمة بالوثائق بدءا من عام ١٩٠٦ عند ترسيم الحدود الادارية بين مصر والولايات العثمانية فى الشمال والشرق وحتى التوقيع على مشارطة التحكيم فى عام ١٩٨٦ ، واستغرق الشرح الذى قدمه الخبير البريطانى للمحكمة ما تبقى من الجلسة الصباحية واستكمل حديثه فى الجلسة المسائية ، ثم بدأ فى تقديم الشهود المؤيدين لما ذكراه من بيانات لسماعهم أمام المحكمة واتاحة الفرصة لمناقشتهم واستجوابهم بواسطة محامى الجانب الاسرائيلى •

وأعقب ذلك الأستاذ الدكتور صلاح عامر الذى تناول بالشرح والايضاح « مبدأ ثبات ونهائية الحدود الدولية » كما استقر فى كتابات فقهاء القانون الدولى وأحكام المحاكم الدولية ، وتلاه الاستاذ الدكتور مفيد شهاب ببيان « مدى التأثير القانونى للمسلك الذى تتبعه الدولة من الناحية العملية » ، مركزا على عدم وجود اعتراض على مـــواقع الحدود خلال فترة زمنية طويلة نسبيا وهل يعتبر هذا قبولا ضمنيا أو على الأقل تسليما لوضع مستقر لا تصح العودة مستقبلا للتشكيك فيه ، ثم اختتم الاستاذ الدكتور طلعت الغنيمى تلك الجلسة بالحديث عن القواعد القانونية التى تحكم : « مدى تأثير قيام حالة الحرب على الحدود » ردا على الادعاء الاسرائيلى بأنه لا يمكن أن ينســـب الى

اسرائيل أى مسلك يمكن التعويل عليه خلال الفترة التى سادت فيها علاقات عدائية والتى لم تنتهى الا بالتوقيع على معاهدة السلام .

١٦ ــ وبالدراسة المتأنية للمرافعات الاسرائيلية خلال الفتـرة الفاصلة ما بين الدور الأول والدور الثانى ، فقد اتفق الرأى بين أعضاء الجانب المصرى فى هيئة الدفاع على أنه ما دامت اسرائيل لم تجحد أو تناقش خلال مرافعاتها المسائل المتصلة بالاطار النظرى للمبـادىء القانونية التى تحكم مسائل الحدود الدولية فى القانون الدولى العام المعاصر ، فيجب الاقتصار خلال الدور الثانى للمرافعات الشفوية على الجوانب الأخرى التى تناولتها المرافعات الاسرائيلية .

وعلى هذا الأساس بدأت المرحلة الختامية بكلمة افتتاحية للسفير الدكتور / نبيل العربى . وأعقبه الاستاذ الدكتور جورج أبى صـعب للرد على وجهات النظر الاسرائيلى المعارضة بالنسبة لتحديد مهمـة المحكمة وخاصة فى مواجهة الادعاء الاسرائيلى بأن المحكمة يمكن أن ترفض وجهتى النظر المصرية والاسرائيلية لعدم اقتناعها بسلامة أى من المواقع المقترحة للعلامات وأنه عند تحقق هذا الفرض يتعين على المحكمة أن تحكم برفض دعوى كل من الطرفين وتكون نتيجة التحكيم سلبية . وقام سير ايان سنكلير بعد ذلك بدحض الادعاءات الاسرائيلية حـول الخرائط التى كانت بريطانيا قد أعدتها خلال الحرب العالمية الأولى متضمنة بيانا لمواقع الحدود الدولية لمصر من الناحية الشمالية الشرقية ، حيث زعمت اسرائيل أثناء الدور الأول للمرافعات أن تلك الخرائط قد تضمنت أخطاء تجعلها غير أهل للثقة ويتعين استبعادها كدليل لصالح مصـــر .

وفى ضوء تلك الايضاحات المبدئية التى قدمها الدكتور جورج أبى صعب وسير سنكلير قام كاتب هذه الدراسة ببيان أوجه الفساد فيما ورد بالمرافعات الاسرائيلية بالنسبة للثلاثة عشر علامة السابقة على العـلامة ٩١ ، وأعقب الاسـتاذ دريك باوت داحضـا ما كان زميله

لوترباخت قد ذكره من ادعاءات بالنسبة للعلامة الأخيرة رقم ٩١ عند طـابـا •

١٧ — ولما كان موضوع الدراسة الحالية ينصب على حكم هيئة التحكيم وحده دون غيره من مختلف أبعاد القضية سياسيا وقانونيا ، وبالنظر الى أن حكم ٢٩ سبتمبر ١٩٨٨ قد جاء خلوا من أية اضافة بالنسبة للجوانب المتصلة بالاطار النظرى للقواعد القانونية التى تحكم النزاع ، فان ما سنعالجه فيما يلى سيقتصر على تناول ما ورد بحكم هيئة التحكيم من مناقشة للحجج التى ساقتها كل من مصر واسرائيل للتدليل على صحة المواقع التى حددتها كل دولة للأربعة عشرة علامة حدود المتنازع عليها والأسباب التى جعلت هيئة التحكيم تأخذ بوجهة النظر المصرية بالنسبة لمواقع غالبية العلامات ، وبخاصة فى منطقة رأس النقب ذات الأهمية الاستراتيجية البالغة كما سلفت الاشارة ، وفى طابا ذاتها حيث لعبت العواطف الوطنية والمصالح السياحية دورا بالغا فى تضخيم حجم الخسارة الاسرائيلية •

ولعل أفضل منهج يمكن اتباعه فى تقسيم دراستنا هو الالتزام بذات التسلسل فى السياق الذى ورد فى حكم هيئة التحكيم محل البحث • فالحكم ينقسم الى ثلاثة أجزاء متعاقبة •

جزء أول — خاص بالعلامات المتنازع عليها فى القطاع الشمالى من الحدود ابتداء من العلامة رقم (٧) وانتهاء بتلك التى تحمل رقم (٥٦) •

جزء ثانى — يتعلق بالعلامات الواقعة فى منطقة رأس النقب وهى العلامات من رقم (٨٥) ، وحتى رقم (٨٨) •

جزء ثالث — علامة الحدود رقم ٩١ عند طابا •

وفى نطاق كل جزء سنبدأ ببيان الموقف الاسرائيلى والحجج المؤيدة

له ، ثم نوضح الموقف المصرى وأسانيده ، وننتهى بابراز ما قـــررته المحكمة فى مجال المفاضلة بين الموقفين والأسباب التى بنت عليها قضاءها مع ما نراه لازما من تعقيب •

وأملنا ان نكون بذلك قد أسهمنا فى اعطاء صورة واضحة عن قضية تحكيم طابا بمختلف أبعادها للباحثين عن الحقيقة أداء لرسالة العلم وخدمة للوطن الذى أعطانى فرصة أن أكون جنديا فى معركة هذا التحكيم التاريخى الذى أعاد للكثيرين الثقة فى امكانية وجود علاقات دولية تقوم على مبدأ سيادة القانون •

الفصـــل الأول

العلامات التسعة فى القطاع الشمالى للحدود

١٨ ــ الجزء الشمالى من منطقة الحدود ــ الذى يبدأ قـــرب رفح على شاطىء البحر الأبيض المتوسط ويمتد الى مشارف منطقة العوجه بالقطاع الأوسط ــ يتسم بخصائص مميزة أهمها :

(أ) من الناحية الجغرافية ، وقوع غالبيته فى مناطق صحراوية غير مأهولة بالسكان وتتغير معالمها بصفة مستمرة نتيجة تحرك كثبان الرمال التى تغطيها وسائر عوامل التعرية الجوية بحيث لا توجد بها شواهد أو معالم جغرافية ثابتة يمكن وصفها بدقة واستمرارها لفترات زمنية طويلة •

(ب) كما أنه من الثابت تاريخيا أن الأراضى الواقعة على جانبى الحدود فى ذلك القطاع الشمالى كانت مسرحا لعمليات حربية متعاقبة منذ عام ١٩٤٨ أدت الى زوال علامات الحدود ســـواء تلك التى تم أرساءها فى عام ١٩٠٦ أو ما حل محلها فى ذات المواقع من تجديدات وأصلاحات لمعالجة الأضرار التى لحقت بالعلامات الاصلية بســـبب العوامل الجوية طوال الفترة ما بين عام ١٩٠٦ وعام ١٩٤٨ •

١٩ ــ ونتيجة عدم وجود علامات حدود قائمة تحدد على وجه اليقين المواقع التى تم ترسيمها فى عام ١٩٠٦ وأستقرت قانونيا وعمليا طوال فترة الأنتداب البريطانى على فلسطين ، فقد لجأ كل من الجانبين المصرى والاسرائيلى خلال مرحلة عمل اللجنة الفنية المشتركة عام ١٩٨١ الى الاعتماد على وسائل بديلة لتحديد المواقع التى يجب أن تقام عليها العلامات الجديدة • وبصفة عامة ، فان الفريق المصرى اقترح مواقع تتفق أساسا مع الخرائط المعتمدة ، وبالذات تلك التى تم وضعها فى

الفترة ما بين عام ١٩٣٥ و ١٩٣٨ ٠ هذا فى حين سعى الفريق الاسرائيلى الى محاولة زحزحة المواقع تجاه الغرب كلما كان ذلك ممكنا استنادا الى وجود ما يتصور أنه آثار لبقايا مواقع قديمة تهدمت أو أقامتها اسرائيل خلال فترة احتلالها للمنطقة ٠

٢٠ – والظاهرة التى تستحق التسجيل ابتداء أن المسافة الفاصلة بين التحديدين المصرى والاسرائيلى لمواقع العلامات المتنازع عليها فى ذلك القطاع الشمالى وصل أقصى حد لها الى قرابة الـ ١٤٥ مترا فى حالة واحدة (بالنسبة للعلامة رقم ٥٢ التى قضت فى شأنها هيئة التحكيم لصالح الموقع المصرى) ، ولم تتجاوز المسافة بالنسبة لأربعة علامات ما بين ٣٤ و ٦٥ مترا ، ثم تناقصت المسافة بالنسبة للعلامات الأربعة الأخرى من ستة أمتار الى ما يقل عن مترين فى حدها الادنى (العلامة رقم ٢٧ التى قضت أيضا فى شأنها هيئة التحكيم لصالح الموقع المصرى) ٠

ونظرا لعدم وجود دليل قاطع فى شأن أى من تلك العلامات المحدودة الأهمية الواقعة كلها فى منطقة كثبان رملية منخفضة الارتفاع وليست لها أية أهمية استراتيجية خاصة ، فقد كان المتوقع حسب المجرى العادى للأمور أن يتم من خلال جولة مفاوضات جديدة الرجوع الى المصادر والوثائق الأصلية من أجل محاولة الوصول الى اتفاق بين أعضاء اللجنة الفنية المشتركة على مواقع يعتمدها الطرفان ٠بيد أنه عندما نشأ النزاع حول النقاط الأخرى فى الجنوب ، فقد رؤى حينذاك أن يترك الأمر لهيئة التحكيم حتى لا يتهم جانب بأنه قد تخلى عن حق أو شبهة حق ولو على شبر واحد من التراب الوطنى ٠

٢١ – وامام هيئة التحكيم انصب الجانب الأول من أوجه الدفاع المصرى على ضرورة استبعاد القرائن التى تستند اليها اسرائيل بالنسبة لوجود بقايا للعلامات القديمة أو تمسكا بما خلفته قوات الأمم المتحدة من شواهد على الطبيعة ، كما أنه من باب أولى يتعين رفض أية حجة

تستند الى ما أقامته اسرائيل بعمل منفــرد من جانبها خلال فتــرة احتلالها للمنطقة •

وبعد هدم الحجج الاسرائيلية سعى الدفاع المصرى الى ابراز أن المعيار الوحيد الذى يمكن الاطمئنان اليه وفقا للقواعد القانونية الواجبة الاتباع هو استقراء ما تشير اليه الأوصاف التى صاحبت ترسيم الحدود فى عام ١٩٠٦ ، حيث أوضح التقرير الرسمى لأعمال اللجنة المشتركة العثمانية المصرية انها قد سعت الى اقامة خط مستقيم بقدر الامكان ، كما أكد الخبير البريطانى Wade — الذى لعب الدور الأساسى فى عملية ترسيم الحــدود عام ١٩٠٦ — فى وصفه لمــا تم استقامة الخط استقامة تكاد تكون كاملة بالنسبة للعلامات التى أرسيت فى تلك المنطقة من الحدود دون حاجة الى اختبارات أضافية للتأكد من الرؤية المتبادلة (Intervisibility) • وقد جاءت جميع الخــرائط الرسمية المعتمدة والتى أعدت لاحقا تؤكد تلك الاستقامة كطابع غالب لا ترد عليه سوى استثناءات قليلة ولظروف خاصة •

٢٢ — وقد أخذت هيئة التحكيم فى مستهل بحثها لمــواقع تلك العلامات بالمنهج الذى اقترحه الدفاع المصرى ، سواء من حيث رفض القرائن التى استندت اليها اسرائيل ، أو فيما يتعلق بضرورة الاستهداء بمعيار استقامة الخط الذى يربط بين كل علامة وما يسبقها أو يليهــا من علامات فى الاتجاهين حتى تأتى المحصلة النهائية ايجاد خط حدود أقرب ما يمكن الى الاستقامة كما وصفته الوثائق الرسمية التى صاحبت عملية ارساء العلامات الأصلية فى عام ١٩٠٦ •

٢٣ — ويتمثل رفض ما تمسكت به اسرائيل من شواهد لبقايا علامات لا دليل على قدمها أو موقعها الأصلى فى قول هيئة التحــكيم بالفقرة ١٨٤ من حكمها :

«In no case of alleged remnants of original pillars, however, could the Tribunal find sufficient evidence demonstrating that

the loose stones considered as remnants actually marked the location of an original boundary pillar, even if it is accepted that the stones might have come from original boundary pillars».

كما رفضت هيئة التحكيم أعطاء أية قيمة لما خلفته قوات الطوارىء الدولية أو قوات الاحتلال الاسرائيلى من تحديدات ، حيث أضافت قائلة :

«As to UNEF markers or markers erected by the Survey of Israel, the Tribunal similarly finds no sufficient evidence as to the accuracy of their placement or certiainty of their origin».

٢٤ — وبعد أن استبعدت هيئة التحكيم القرائن الاسرائيلية كدليل اثبات يمكن الاعتماد عليه ، بدأت ابراز الشق الايجابى من المنهج العام الواجب الاتباع فى غيبة البرهان القاطع الذى يتعذر تصوره نتيجة زوال العلامات القديمة التى وضعت عام ١٩٠٦ ، وذلك بقولها :

«The Tribunal must take into account the relative strength of the titles invoked by the Parties .... as was done by the arbitrator in the **Island of Palmas** case (2 RIAA 869-70)».

وكانت هيئة التحكيم قد أوضحت فى فقرة سابقة ما تعنيه بوجود ادعاء أفضل (better claim) اعمالا لقاعدة « تفاضل أدلة الاثبات » (the preponderonce of evidence rule) ، حيث ذكرت فى الفقرة ١٧٦ :

«The « Preponderance of evidence » rule means that the Tribunal may find for location A .... if the evidence for A is stronger than the evidence for B».

وفى ذات الوقت ، أبرزت هيئة التحكيم أن الخرائط المعتمدة واحداثياتها والارتفاعات ونقاط الحساب الفلكى المثبتة عليها لا يمكن أن تساعد كقاعدة عامة على ترجيح موقع يبعد عن الأخر بضعة أمتار بالنظر الى أن مقياس أكبر الخرائط المتاحة كان ١ الى مائة ألف ، ومؤداه أن كل مليمتر على الخريطة يمثل فى الطبيعة مائة متر .

وبالتالى ، فان أقصى ما يمكن أن تؤديه الخرائط المساحية من دور هو اعطاء انطباع عام عن مدى استقامة الخط الموصل بين عـدة علامات ، وذلك ما لم تتضمن الخريطة فى صدد نقطة معينة وصفا محددا يؤدى الى تمييز احداثياتها على الطبيعة بوجه الدقة .

٢٥ ــ وقد خلصت هيئة التحكيم بناء على كل ما سبق الى تبنى معيار للتفضيل يتفق مع وجهة النظر المصرية ومؤداه انه فى غياب مبرر خاص يصير الحكم لصالح أقرب الموقعين المقترحين الى الاستقامـة مع الخط الذى يؤدى الى كل من العلامات المحيطة غير المتنازع عليها سواء شمالا أو جنوبا . وهذا ما عبرت عنه هيئة التحكيم فى الفقـرة ١٨٧ من حكمها بقولها :

« Where no other relevant evidence for a pillar location has been produced by the Parties, the Tribunal will, in a subsidiary way, consider which of the claimed locations is on or closest to a straight line extended through adjacent agreed pillars, and decide on that basis».

وبذلك انحصرت مهمة هيئة التحكيم بالنسبة لغالبية العـلامات الشمالية فى أن تستظهر فى ضوء بطاقات الوصف لكل موقع مقترح ما اذا كان أقرب الى الاستقامة أو أبعد ، وذلك باعتبار أن الاستقامة الكاملة تجعله على ١٨٠ درجة ، وكلما كان بعيدا عن الـ ١٨٠ درجة كلما كان مؤديا الى خط أقل استقامة . وهذا ما طبقته هيئة التحكيم بالنسـبة للعلامات التسعة المتنازع عليها فى القطاع الشمالى بالتفصيل التالى .

٢٦ ــ علامة الحدود رقم ٧ : بالتطبيق لمعيار ترجيح المـوقع الى خط أقرب للاستقامة ، اعتمدت هيئة التحكيم الموقع المصرى باعتبار أنه يقع مع العلامة رقم ١٠ على ١٨٠ درجة تماما ، فى حين أن الموقع الاسرائيلى على ١٧٩ درجة تقريبا . واستخلصت هيئة التحكيم هذه النتيجة بدراسة بطاقات الوصف التى أمدها كل طرف للموقع الذى حدده والمرفقة كملحق لمشارطة التحكيم كما يبين من النموذج التالى

APPENDIX A

Disputed Location of Boundary Pillar No. 7(E)

Marking Description

ANGLE IRON

Witness Marks:

1- Boundary pillar No.8

2- Boundary pillar No.10

3-

4-

Identification Data

7(EX A.1)

H D.=3707.20m

180°.00'.00"

1 B.P. No.8

H D.=5555.47m

2 B.P. No.10

Photograph

(Approx. Scale 1:5000)

Remarks: in accordance with the Annex.

Reference 1:100 000 map. Sheet no. 6187.

SIGNATURES

	For Egypt:	For Israel:
Technical Experts	EL CHINAWY [signature]	G. Steinberg [signature]
Chief of the Liaison System	[signature]	[signature]

APPENDIX A

Disputed Location of Boundary Pillar No 7(I)

Marking Description

Angle Iron (0.94 m.)

Witness Marks:

1. Broken concrete Barrel
2. Angle Iron (7E)
3.
4.

Identification Data.

1 9.60 7I 57.98 2.

113° 90°35'

3706.10

B.P. 8

173°03'43

B.P. 10

Photograph

(Approx. Scale 1: 5000)

Remarks:

Reference 1:100 000 map 6187 in accordance with the Annex.

SIGNATURES

	For Egypt:	For Israel:
Technical Experts	EL-SHIWAWY [signature]	[signature]
Chief of the Liaison System	[signature]	[signature]

٢٧ — العلامتان رقم ١٤ و ١٥ : بالنسبة للعلامة رقم ١٤ تميزت بوضع خاص ناشيء عن أن موقعها يقع فى ذات المكان الذى وردت احداثياته ضمن كتاب كان اللواء أمين حلمى الثانى قد أرسله بوصفه ضابط الاتصال المصرى لقائد القوات الأمم المتحدة فى ١٠ أغسطس ١٩٦٠ • وقد تبينت هيئة التحكيم أن هذه الاحداثيات تتفق تماما مع الموقع الاسرائيلى المقترح ولا تتطابق مع الموقع الوارد فى بطاقة الوصف المصرية الملحقة بمشارطة التحكيم • ولذلك ، لم تلجأ هيئة التحكيم الى اتباع معيار خط الاستقامة فى وجود ذلك الظرف الخاص ، وانتهت الى القضاء لصالح الموقع الاسرائيلى بناء على الخطأ الذى وقع من جانب فريق المساحة العسكرية المصرى عندما حدد على الطبيعة موقعا يختلف عما هو ثابت لديه من معلومات قديمة لم يتسنى الرجوع اليها فى حينه •

وبتطبيق معيار الخط الأقرب الى الاستقامة بالنسبة للعلامة رقم ١٥ تم كذلك الحكم لصالح الموقع الاسرائيلى كأثر تبعى لازم •

٢٨ — علامة الحدود رقم ١٧ : بالتطبيق لمعيار تفضيل الموقع المؤدى الى خط حدود أقرب الى الاستقامة قضت هيئة التحكيم لصالح الموقع المصرى بالنظر الى أنه يؤدى الى امتداد لا يبعد عن الـ ١٨٠ درجة الا بفاصل ضئيل ، بينما الموقع الاسرائيلى يبعد بقدر أكبر •

٢٩ — علامة الحدود رقم ٢٧ : رغم الصعوبة العملية البالغة الناتجة عن أن المسافة بين الموقعين المقترحين لا يتجاوز مترا واحدا و ٧٧ سنتيمتر ، فلم تجد هيئة التحكيم بدا — ازاء استحالة اللجوء الى دليل قاطع بناء على دراسة الاحداثيات المدعاة من جانب أو آخر — من العودة الى المعيار الاحتياطى المتعلق بالاستقامة ، وقضت لصالح الموقع المصرى باعتباره مؤديا الى خط حدود أكثر استقامة بالنظر الى ما قبله وما بعده من علامات •

٣٠ — علامة الحدود رقم ٤٦ : سيرا على ذات النهج تبينت هيئة التحكيم أن الموقع الاسرائيلى المقترح يحقق خط حدود أكثر

استقامة من مثيله المصرى ، وبالتالى قضت فى خصوص هذه العـــلامة لصالح اسرائيل ٠

٣١ — **العلامتان رقم ٥١ و ٥٢ :** استعرضت هيئة التحكيم فى صدد هاتين العلامتين ما كان قد ورد من بيانات خلال مرحلة رســـم الحدود عام ١٩٠٦ والتى تدل على اتجاه النية الى اتباع خط حدود مستقيم يسير باتجاه العلامة التالية رقم ٥٣ ، وهو الوضع الذى تأكد فى الخرائط المعتمدة المعدة لاحقا ٠ ولما كان الموقع المصرى المقتـــرح لكل من العلامتين ٥١ و ٥٢ يؤدى الى خط مستقيم بالنظر الى العلامة رقم ٥٣ ناحية الجنوب حسبما تقرر ترسيم الحدود ابتداء ، لذلك فقد قضت هيئة التحكيم لصالح الموقعين الواردين ببطاقات الوصف المصرية الملحقة بمشارطة التحكيم ، وهو ما أدى الى البدء بفارق مقداره مسافة ٥ أمتار لصالح مصر عند العلامة رقم ٥١ ثم ظل الفارق يزداد اتساعا حتى وصل الى ١٤٥ مترا عند العلامة رقم ٥٢ ٠

٣٢ — **علامة الحدود رقم ٥٦ :** فى غيبة أى اعتبار خاص يبرر الأخذ بمعيار مغاير ، لجأت هيئة التحكيم مرة أخرى الى تبنى فـــكرة الترجيح الموقع المؤدى الى خط حدود أكثر استقامة ، وجاء التطبيق فى هذا الخصوص لصالح الموقع الاسرائيلى المؤدى الى امتداد أقرب الى الـــ ١٨٠ درجة بالمقارنة مع الوضـــع المتحقق بالنسبة للمـــوقع المصـــرى ٠

٣٣ — وخلاصة القول ، أنه اذا كانت هيئة التحكيم قد انتهت الى ترجيح المواقع الاسرائيلية المقترحة بالنسبة لأربعة عـــلامات فى القطاع الشمالى ، فان ذلك القضاء لم يستند الى أى من الحجج التى كانت قد تقدمت بها اسرائيل أثناء نظر القضية لدعم وجهة نظرها ، اذ خلصت هيئة التحكيم ابتداء الى طرح أدلة الاثبات التى اعتمد عليها الجانب الاسرائيلى فى دفاعه ٠ وبالعكس ، فقد قامت هيئة التحـــكيم بتبنى المعيار الذى اقترحه الدفاع المصرى والمتعلق بترجيح المـــوقع

المؤدى الى خط حدود أكثر استقامة تطبيقا لما كانت قد اتجهت اليه نية ممثلى الطرفين عند ارساء العلامات الأصلية فى عام ١٩٠٦ • وكل ما فى الأمر ، أنه بتطبيق هذا المعيار اكتشفت هيئة التحكيم أن ثمة خطأ حسابى كان قد وقع فى حالتين عند اختيار الجانب الفنى المصرى لمواقع أقل قربا من الخط المستقيم وفقا للتفسير الذى اعتمدته هيئة التحكيم لمفهوم الاستقامة حسبما حددته بطاقات الوصف وحدها دون غيرها منظورا اليها من العلامات غير المتنازع عليها المتجاورة •

وبالنسبة للعلامتين الأخريين تم تحديدهما بمراعاة الاحداثيات التى سبق أن أقرتها مصر وأعلنتها الى الأمم المتحدة •

وحكم هيئة التحكيم فى صدد كافة تلك العلامات التى زال الدليل القاطع على مواقعها القديمة كاشف للأماكن الواجب أن تكون عليها تلك العلامات كما تحددها القواعد القانونية السليمه وتتفق مع الواقع الجغرافى الصحيح • وقد حرصنا على ايراد بطاقتى الوصف الخاصتين بالعلامة رقم ٧ أعلاه كمثال للمنهج الذى اتبعته هيئة التحكيم بالنسبة لغالبية العلامات المتنازع عليها فى القطاع الشمالى أخذا بمعيار موضوعى لا محل معه للاجتهاد الشخصى أو الاختلاف فى الرأى •

الفصـــل الثـــانى
العلامات الأربعة فى منطقة رأس النقب

٣٣ ـــ على خلاف الوضع السائد فى القطاع الشمالى ، فان منطقة رأس النقب تتكون من مرتفعات جبلية لم تكن مسرحا لأية عمليـــات عسكرية فى السابق ، مما أدى الى أن علامات الحدود ظلت ثابتة فى أماكنها سليمة ، واستطاع أعضاء اللجنة الفنية المشتركة معاينتها على الطبيعة وأخذ صور فوتوغرافية لها فى أكتوبر ـــ نوفمبر عام ١٩٨١ •

وبالتالى ، فانه عندما حدث التغير فى السياسة الاسرائيلية على نحو ما أوضحنا بالمقدمة ، لم يكن من الممكن الادعاء بعدم وجود علامات حدود قائمة بتلك المنطقة الحيوية ، وانما تركزت الاعتراضـــات على محاولة التشكيك فى أن علامات الحدود أرقام ٨٥ و ٨٦ و ٨٧ القائمة حينذاك قد وضعت فى أماكن سليمة ابتداء •

٣٤ ـــ كما أنه أثناء مباشرة اللجنة الفنية المشتركة لمهامها قبل نشأة النزاع ، كان قد تم الاتفاق بين الجانبين المصرى والاسرائيلى على أنه من المناسب اضافة علامة حدود جديدة لم تكن موجودة سابقا فى موقع مستحدث جنوب العلامة رقم ٨٧ فى اتجاه المسار نحو العلامة التالية ، بحيث تتم اضافة علامة حدود تحمل رقم ٨٨ ، وتتحول العلامة رقم ٨٨ سابقا الى رقم ٨٩ ، والعلامة التى كانت معروفة سلفا تحت رقم ٨٩ تصير العلامة رقم ٩٠ ، وينتهى تسلسل العلامات عند رقـــم ٩١ الكائن فى منطقة طابا فى الموقع الذى كان معروفا فيما مضى بأنه موقع العلامة رقم ٩٠ الواقع على المرتفعات الشرقية المطلة على وادى طـــابـــا •

وسنعود بالضرورة فى الفصل الثالث للمشكلات الناجمة عن اعادة الترقيم وأثر ذلك على العلامة رقم ٩١ ، ولكن ما يعنينا الآن هو ايضاح أن الموقع النهائى للعلامة رقم ٨٨ المستحدثة يتوقف على المصير النهائى

للعلامة السابقة رقم ٨٧ • وبالفعل ، تمت احالة مسألة تحديد موقع العلامة رقم ٨٨ الى هيئة التحكيم ، اذ قام الجانب المصرى باجراء بطاقة وصف ألحقت بمشارطة التحكيم تحدد الموقع الذى يجب أن تقام عليه العلامة المستحدثة فى ضوء المسار الطبيعى لخط الحدود ما بين الموقع المصرى المقترح للعلامة رقم ٨٧ والعلامة رقم ٨٩ (٨٨ سابقا) غير المتنازع عليها • وكذلك قام الجانب الاسرائيلى باجراء بطاقة وصف ألحقت بمشارطة التحكيم تحدد موقع العلامة المستحدثة وفقا لما تعتبره اسرائيل المكان الصحيح للعلامة رقم ٨٧ •

٣٥ — ونقطة البداية بالنسبة للأسانيد القانونية التى يعتمد عليها الموقف المصرى فيما يتعلق بالعلامات الثلاثة القديمة أرقام ٨٥ و ٨٦ ، ٨٧ التمسك بالحالة الظاهرة باعتبار أنها قائمة بالفعل على نحو من الواضح أنه سليم وينطق بالحقيقة حسبما هو محفور على الأعمدة ذاتها من أرقام • ولا يوجد ما يدعو الى الشك فى أن تلك الأعمدة قد أقيمت على ذات النسق الذى تم بناءه فى عام ١٩٠٦ — ١٩٠٧ ليحل محل الأعمدة التلغرافية التى وضعت خلال المرحلة الأولى لعملية الترسيم فى أكتوبر ١٩٠٦، كما أن المنطقة التى بها الأعمدة الثلاثة كانت خارج السيطرة المصرية منذ عام ١٩٥٦ ، سواء تحت اشراف قوات الطوارىء الدولية منذ ذلك الحين الى مايو ١٩٦٧ ، أو تحت الاحتلال الاسرائيلى فى أعقاب حرب يونيو ١٩٦٧ ، ولم يحدث لا قبل ١٩٥٦ ولا بعد ذلك أن حدث أدنى اعتراض على مواقع تلك العلامات أو التشكيك فى قدم الأعمدة أو مطابقتها للنموذج الذى اتبع عند بناء تلك الأعمدة تحت اشراف اللجنة المشتركة العثمانية المصرية فى عام ١٩٠٦ — ١٩٠٧ •

٣٦ — وبالاضافة الى ذلك الوضع الظاهر الناتج عن وجود العلامات قائمة وسليمة ، فان كافة الخرائط ابتداء بالخريطة الملحقة باتفاقية ١٩٠٦ وسائر الخرائط اللاحقة التركية والمصرية والبريطانية بل والاسرائيلية ذاتها السابقة على عام ١٩٨٢ تكشف جميعها عن أن

تلك الأعمدة قد أقيمت فى المواقع السليمة على خط الحدود الدولية كما ظل معترفا به قبل وأثناء فترة الانتداب البريطانى على فلسطين .

وهذه المواقع تتفق مع الوصف الوارد فى اتفاقية ١٩٠٦ ذاتها ، باعتبار أن المـــادة الأولى من هذه الاتفاقية قد أوردت تحديدا لعملية ترسيم خط الحدود فى المنطقة الجنوبية عن طريق الاشارة الى معالم جغرافية معينة ، وذلك بالنص على الآتى وفقا للترجمة الانجليزية الى أعدت حينذاك وأرفقت بالنص الأصلى التركى :

«The administrative separating line, as shown on map attached to this Agreement, begins at the point of Ras Taba on the western shore of the Gulf of Akaba and follows along the eastern ridge overlooking Wadi Taba to the top of Jebel Fort, from thence the separating line extends by straight lines as follows :

From Jebel Fort to a point not exceeding 200 meters to the east of the top of Jebel Fathi Pasha, thence to that point which is formed by the intersection of a prolongation of this line with a perpendicular line drawn from a point 200 meters measured from the top of Jebel Fathi Rasha along the line drawn from the centre of the top hill to Mafrak Point (the Mafrak is the junction of the Gaza-Akaba and Nekhl-Akaba roads). From this point of intersection to the hill east of and overlooking Thamilet - el-Radadi ....».

٣٧ — فالترسيم الذى تم على مرحلتين بمعرفة لجنة مشتركة عثمانيه — مصرية عقب ابرام تلك الاتفاقية فى أول اكتوبر ١٩٠٦ قد ترجم النص المذكور الى حقيقة واقعة على الطبيعة عن طريق وضـــع العلامات أرقام ٨٣ و ٨٤ و ٨٥ و ٨٦ . والخريطة التى أرفقت بالاتفاقية والمشار اليها فى صدد المـــادة الأولى أوضحت اتجاهات خط الحدود الموصل ما بين تلك العلامات ، وهو خط التزمته كافة الخرائط الرسمية التى أعدت منذ ذلك الحين والتى بلغ عدد ما قدم منها الى هيئة التحكيم

٢٥ خريطة من مصادر متعددة ، بما فيها مصلحة المســاحة الاسرائيلية ذاتهـــا •

ولم تبدأ اسرائيل بتغيير خرائطها لتحريك خط الحدود بزاوية حادة نحو الغرب الا بعد أن نشب النزاع لأول مرة فى نهاية عام ١٩٨١ لمساندة وجهة نظرها اليائسة فى احتلال قرابة ١٢ كليو مترا مربعا من الأراضى الواقعة فوق المرتفعات الاستراتيجية البالغة الأهمية •

والغريب فى الأمر أن الخرائط الاسرائيلية اللاحقة على عام ١٩٨٢ تضمنت خط حدود يختلف بوضوح عن ذلك الذى تؤدى اليه بطاقات الوصف الملحقة بمشارطة التحكيم ، مما يعكس حالة التناقض والتخبط التى اتسم بها الموقف الاسرائيلى •

٣٨ — وفى مواجهة تلك الحجج المصرية الدامغة لجأت اسرائيل الى محاولة التشكيك فى صحة كل ما هو قائم أو ما تم فى المــاضى منذ بداية عام ١٩٠٧ وحتى نشأة النزاع فى أواخر عام ١٩٨١ •

فالعلامات القائمة حسب الادعاء الاسرائيلى ليس هناك دليل على أنها هى ذات العلامات التى تم بناءها فى يناير — فبراير ١٩٠٧ ، وحتى بفرض أن الجانب المصرى يمكن أن ينجح فى اثبات ذلك الأمر شبه المستحيل ، فليس هناك ما يدل على أن الأعمدة المبنية قد أقيمت فى ذات مواقع الأعمدة التلغرافية وتحت اشراف الجانب العثمانى • وحتى اذا تم افتراض عدم وجود خطأ فى هذا المجال ، فالتفسير الاسرائيلى للمادة الأولى من اتفاقية أول أكتوبر ١٩٠٦ مفاده أن كافة المــواقع الوارد ذكرها بالنص انما توجد فى أماكن أخرى الى الغرب ، بمعنى أن واضعى العلامات توجهوا خطأ الى جهة أخرى غير جبل فورت ووضعوا العلامة رقم ٨٧ عليها ، وأنهم قد اعتقدوا بوجود جبل فتحى باشا فى مكان غير موقعه الحقيقى واحتسبوا ٢٠٠ مترا لوضع العلامة رقم ٨٦ ، كما أن الصيغة الهندسية التى اقترحها Wade لتحديد موقع العلامة

رقم ٨٥ على هدى مكان وجود كل من جبل فتحى باشا والمفرق ادعت اسرائيل أنه هو نفسه قد أخطأ فى فهمها وتطبيقها على الطبيعة .

وبعبارة موجزة ، فان الأسلوب المتبع فى محاولة اهدار أية قيمة قانونية للعلامات القائمة فى المواقع المستقرة منذ عام ١٩٠٦ ينحصر فى محاولة هدم كافة المعتقدات المقررة عن طريق اطلاق اسم جبل فورت على مكان آخر غير ذلك الذى تعارف عليه المشاركون فى عملية ترسيم الحدود عام ١٩٠٦ — ١٩٠٧ ، وزحزحة جبل فتحى باشا الى ما يقرب من الكيلو متر غربا ، والادعاء بأن المفرق يقع على تقاطع آخر غير ذلك الذى عرفه الناس منذ قديم الزمان .

٣٩ — والعبث بحقيقة المواقع الجغرافية الثابتة على النحو السالف ذكره كان هو المقدمة اللازمة والأساسية للادعاء الاسرائيلى بأن هناك خطأ وقع أصلا فى تفسير نص المادة الأولى من اتفاقية ١٩٠٦ ، بمعنى أن واضعيها لم يفهموا ما اتفقوا عليه ، وبالتالى فان كل ما قاموا به عقب ذلك سواء فى وضع العلامات على الطبيعة أو فى رسم خط الحدود على الخريطة المرفقة بالاتفاقية كان خطأ اعمالا للأصل القانونى القاضى بأن كل ما بنى على الباطل فهو باطل .

ولما كانت جميع الخرائط اللاحقه — بما فيها الخرائط الاسرائيلية الصادرة حتى عام ١٩٨٢ — قد اتبعت ذات البيان الوارد فى خريطة عام ١٩٠٦ ، فيتعين كذلك من وجهة النظر الاسرائيلية عدم الاعتداد بها واهدارها كدليل اثبات لصالح مصر . وكى يصل التشكيك الاسرائيلى مداه تمسك الدفاع الاسرائيلى بضرورة استبعاد الخريطة المرفقة باتفاقية عام ١٩٠٦ لسبب آخر ، وهو ضياع احدى النسختين الأصليتين وهى التى كانت فى حوزة السلطات البريطانيه وفقا لما يبين من شهادة رسمية قدمتها الخارجية البريطانيه لكل من الطرفين خلال اجراءات التحكيم ، كما أن الحكومة التركية كانت قد زودت كل من الطرفين رسميا وخلال اجراءات التحكيم بصورة من الأصل الآخر المحفوظ

لديها ولكن هذه الصورة جحدتها اسرائيل وطلبت من هيئة التحـكيم عدم الاستناد اليها كدليل نظرا لعدم امكان الاطلاع على الأصل المحفوظ بدار المحفوظات التركية •

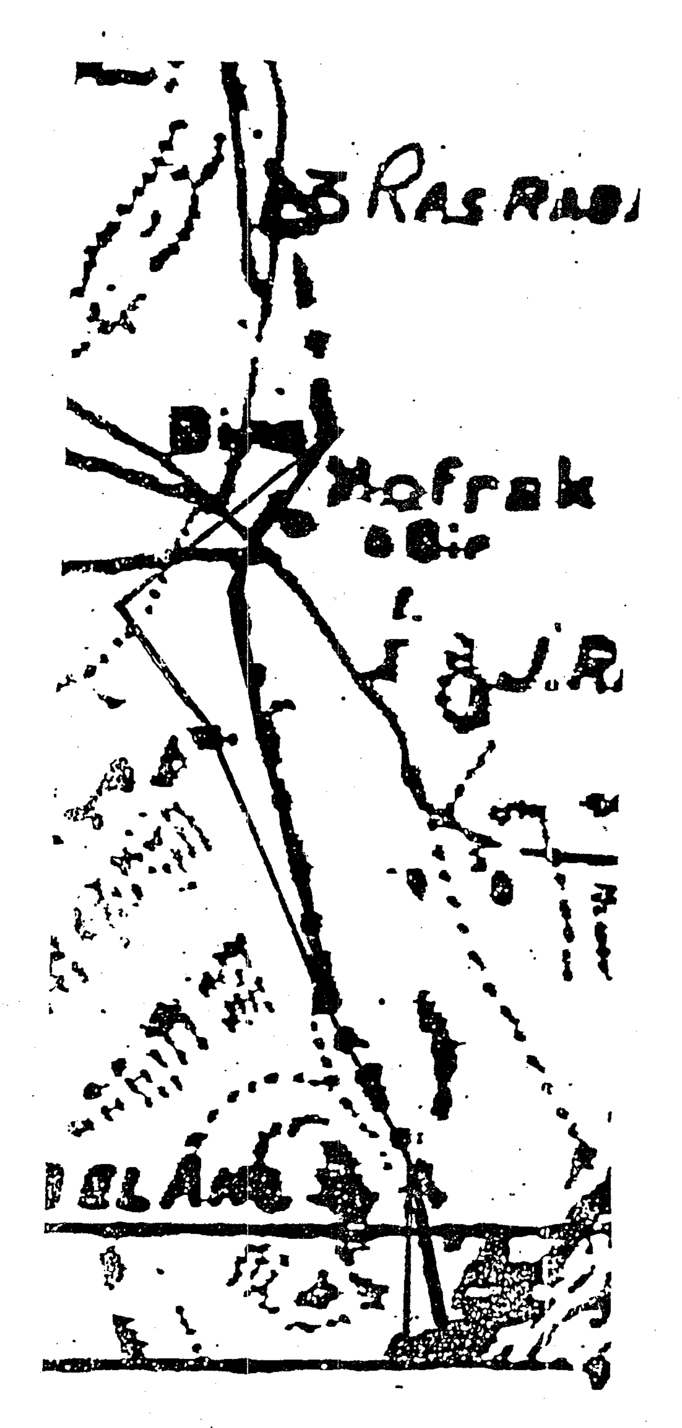
٤٠ ـ وقد رفضت هيئة التحكيم أن تنساق فى المتاهات التى أرادت اسرائيل أن تجرها اليها ، وآثرت الهيئه أن ترفض الادعاءات الاسرائيلية بمنطق قانـونى واضح وعبارات موجزة بقـدر الامـكان تتلخص فى الآتى •

٤١ ـ (أولا) : حتى اذا كانت العلامات ٨٥ و ٨٦ و ٨٧ القائمة والتى عاينتها هيئة التحكيم شخصيا على الطبيعة يتعذر التأكد من أنها هى ذات العلامات التى صار تشييدها فى مستهل عام ١٩٠٧ ، فممـا لا شك فيه أنها كانت موجودة فى مواقعها الحالية على الأقل منذ عام ١٩١٥ وأنها تقع على خط الحدود المعترف به على نحو مؤكد منذ ذلك الحين • وهذا ما أكدته هيئة التحكيم فى الفقرة ١٩٨ من حكمها بقولها :

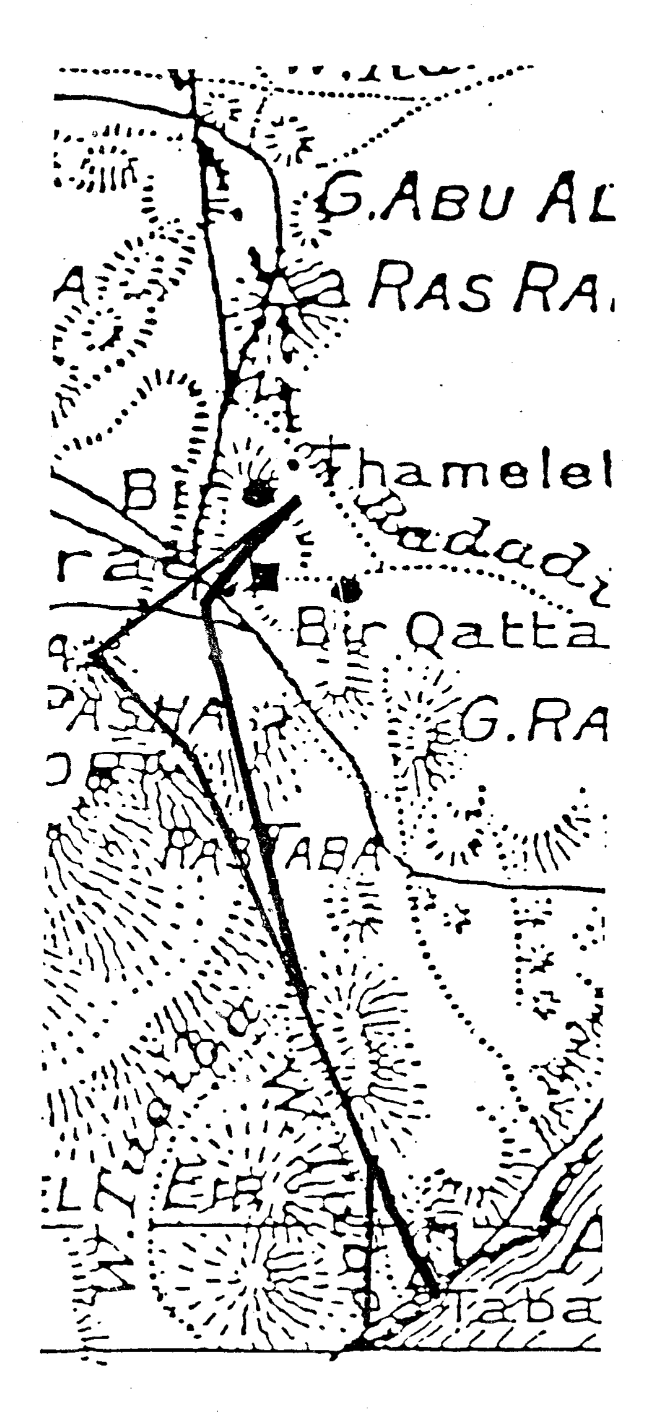
«However, there is no doubt that boundary pillars have been at their present locations at least since 1915. Several maps produced from 1915 on show pillar at the Egyptian locations, especially the 1915 British Maps and the maps of the Survey of Egypt of 1926 and 1935-38. Moreover, all other maps submitted to the Tribunal dating from 1906 through the entire period of the British mandate over Palestine up to 1982, on which the boundary line of 1906 is indicated (approximately 25 maps), show the same direction and shape of this line as does the line formed by the existing pillars. Slight differences which can be observed may easily be explained by the inexactness of several maps. No map made before 1982 shows a line similar to the one corresponding to Israel's locations for pillars 85, 86 and 87. On no such map does the boundary line form a sharp break at BP 85 as it does if one follows Israel's locations.

While on all pre- 1982 maps the angle at BP 85 is widely open (mostly approximately 135°) the angle of the line drawn through BP 85 (I) is much smaller (approximately 75°). On no map from 1906 to 1982 does the boundary line at BP 85 lie as far west as Israel claims. This can easily be recognized not only by the form of the boundary line but also if one compares the relative positions of Israel's and Egypt's locations for BP in relation to the triangular flat or the plateau north of BP 85 which can be seen on most maps. The Tribunal can therefore assume that boundary pillars were in existance at Egypt's locations for BP 85, 86 and 87 during the entire period of the British mandate over Palestine».

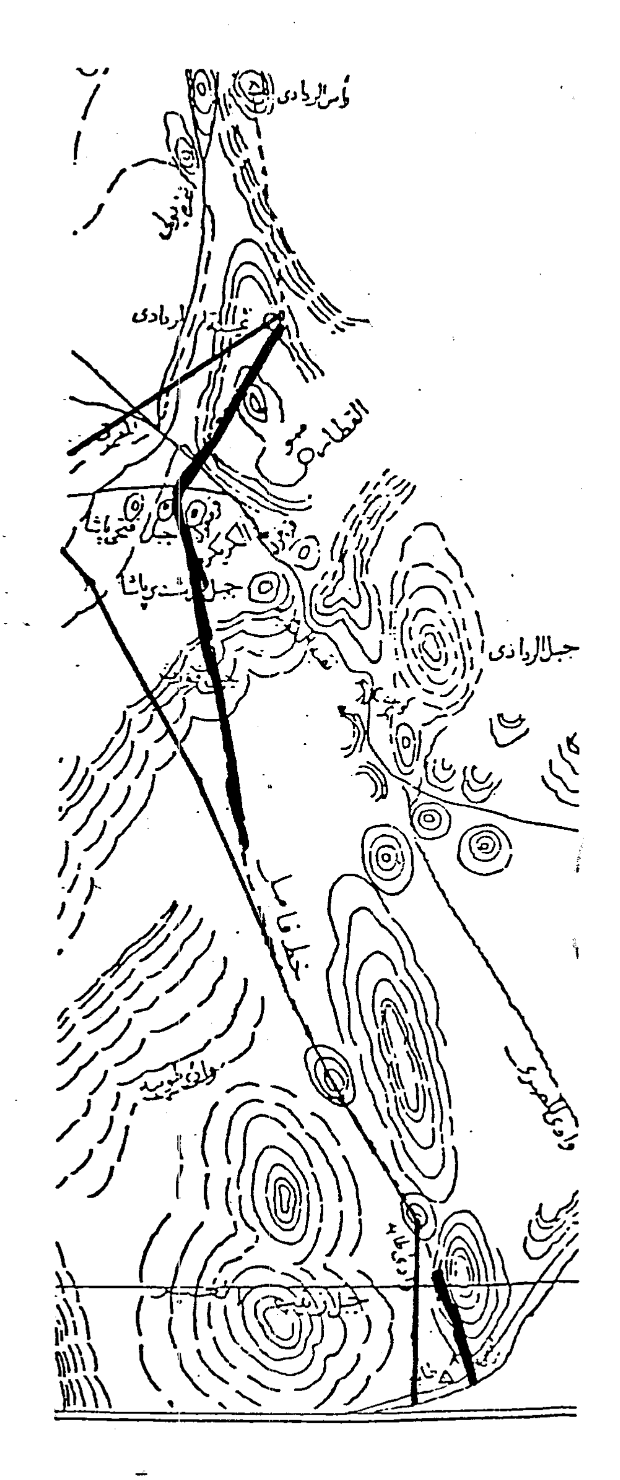
وما ورد بالفقرة المذكورة من استخلاص للملامح الجغرافية وخصائص لمسار خط الحدود بين علامات منطقة رأس النقب يتضح بالرجوع الى الخريطة المرفقة وبالمقارنة لما ورد فى الخرائط القديمة المعاصرة لمرحلة ترسيم خط الحدود من اتجاه يؤيد وجهة النظر المصرية •



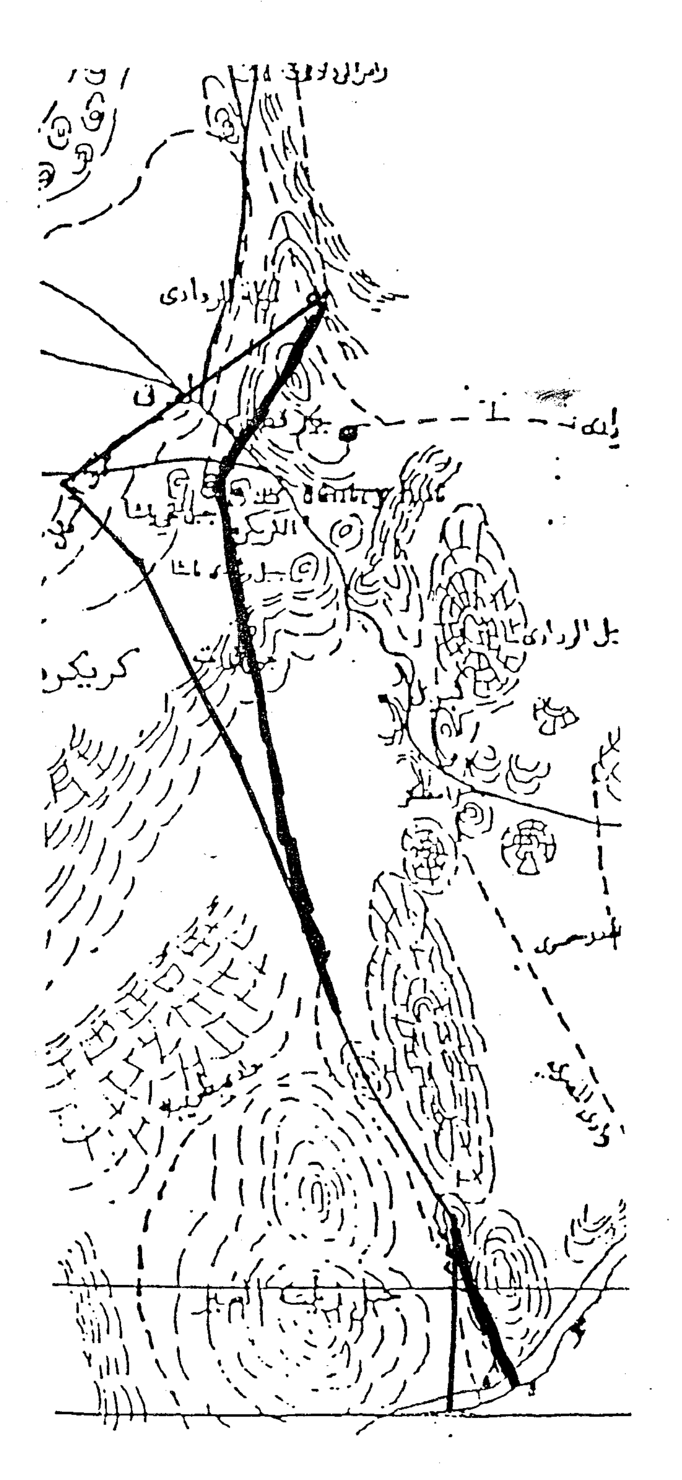
OWEN



WADE



RUSHDI



TURKISH MAP ATTACHED
TO 1906 AGREEMENT

٤٢ — (ثانيا) : واستكملت هيئة التحكيم فى الفقرات التـــالية (٢٠٠ — ٢٠٨) بحث الادعاء الاسرائيلى المتعلق بوجود العـــلامات القائمة فى مواقع تتعارض مع ما كان يجب أن يكون عليه الوضع وفقا لاتفاقية ١٩٠٦ بزعم أن العلامة رقم ٨٧ تمر بجبل آخر غير ما يجب أن يطلق عليه اسم جبل فورت وفقا للمفهوم الاسرائيلى ، والعلامة رقم ٨٦ تم وضعها ٢٠٠ مترا شرق مرتفع آخر غير جبل فتحى باشا كما تعرفه اسرائيل ، والعلامة ٨٥ احتسبت خطأ بحسب التصور الاسرائيلى لموقع جبل فتحى باشا فى علاقته بالمفرق حيث تتقاطع الطرق القادمة من رفح ومن نخل فى اتجاه العقبة .

٤٣ — وكان الادعاء الاسرائيلى فيما يتعلق بجبل فتحى باشا قائما على الالتزام الحرفى بالمكان الذى تمت فيه كتابة الاسم الى الغرب من كل مكان ورد ذكره فى الكروكى الذى أرفقه Wade بتقريره عام ١٩٠٧ ، وكذلك على خريطة عسكرية تركية تاريخها ١٩٠٩ ، حاكتهـــا خريطة أخرى مصرية مؤرخة ١٩١١ . ولكن بالمقارنة مع سائر الخرائط المعاصرة لتلك الفترة ، وبالذات تلك الصادرة من Wade نفسه ومن القومسير التركى رشدى باشا ومن وزارة الحرب البريطانيه عام ١٩٠٧ ، خلصت هيئة التحكيم فى الفقرة ٢٠٥ من حكمها الى القول بأن :

«The fact that on some maps the words «Jebel Fathi Pasha» for one reason or another are not printed exactly where the parties claim they ought to have been printed can hardly be taken as convincing evidence to disprove the correctness of the boundry line as it is indicated on most maps and demarcated on the ground ».

٤٤ — وبالنسبة لجبـــل فورت استندت اسرائيل الى العبـــارة الواردة فى المـــادة الأولى من اتفاقية ١٩٠٦ والدالة على أن خط التقسيم يتبع حد المرتفعات الشرقيه المطلة على وادى طابا «الى أعلى جبلفورت» (to the top of ....) لاعطائها تفسيرا مقتضاه أن جبل فورت يجب أن يكون متواجدا على طرف الحد الشرقى للمرتفعات المطلة على

وادى طابا باعتبار أن هذا الأخير انما يمتد شمالا بحسب التفسير الاسرائيلى ليشمل الوادى الأوسط ، ومن ثم لا يمكن أن يقع جبل فورت الى الغرب منه بحسب الوصف الوارد بالاتفاقيه .

وقد جارت هيئة التحكيم وجهة النظر المصرية فى شأن ضرورة رفض التفسير الاسرائيلى للمادة الأولى من اتفاقية ١٩٠٦ ، وذلك بقولها فى الشق الأول من الفقرة ٢٠٧ من حكمها :

«The wording of Article 1 does not require that Jebel Fort must be in the eastern ridge of Wadi Taba or a point not far from it. It does not exclude that Jebel Fort lies at a considerable distance from the end of the eastern ridge».

كما أيدت هيئة التحكيم وجهة النظر المصرية فيما يتعلق بفساد الادعاء الجغرافى الاسرائيلى الخاص بامتداد وادى طابا شمالا ليشمل الوادى الأوسط الذى لا يحمل عادة أى اسم على الخرائط المعتمدة ، حيث استعرضت جميع هذه الخرائط وخلصت هيئة التحكيم فى ختام الفقرة ٢٠٧ من حكمها الى أنه :

«The contention that the middle tributary bears the name «Wadi Taba» finds no basis in any pre-1982 document or map submitted to the Tribunal».

٤٥ — (ثالثا) : وكان من الجائز أن تقف هيئة التحكيم فى بحثها عند ذلك الحد باعتبار أنها وصلت الى رفض الادعاءات الاسرائيلية وتأكدت من أن مواقع الأعمدة الثلاثة القائمة عند العلامات أرقام ٨٥ ، ٨٦ و ٨٧ لا تتعارض مع أحكام اتفاقية ١٩٠٦ ، بمعنى أنه لم يثبت حدوث خطأ عند بناء الأعمدة فى مستهل ١٩٠٧ كما تزعم اسرائيل ، الا أن الهيئة أرادت أن تؤكد مبدأ قانونيا هاما مقتضاه أنه حتى لو افترض ان ثمة خطأ ما كان قد وقع عند ترسيم الحدود ، فان العبرة بما استقر من الناحية العملية باعتبار أن العلامات التى تم وضعها تحت اشراف لجنة مشتركة تمثل الجانبين انما تعبر عن التفسير الصحيح

الذى ارتضاه الطرفين ، ولا تجوز العودة لاثارة أى بلبلة حول الوضع القائم الذى استقر فى التطبيق العملى ، خصوصا اذا كان قد مضى وقت طويل على عملية الترسيم •

واستندت هيئة التحكيم الى ما استقر عليه قضاء محكمة العدل الدولية فى قضية المعبد بين كمبوديا وتايلاند عام ١٩٦٢ وأيـــده فقه القانون الدولى لتقرر فى الفقرة ٢١٠ من حكمها :

«If a boundary line is once demarcated jointly by the parties concerned, the demarcation is considered as an authentic interpretation of the boundary agreement even if deviations may have occured or if there are some inconsistencies with maps. This has been confirmed in practice and legal doctrine, especially for the case that a long time has elapsed since demarcation».

٤٦ — وتأسيسا على تلك القاعدة القانونية المستقرة جاء قضاء هيئة التحكيم بالنسبة للعلامات ٨٥ و ٨٦ و ٨٧ مؤيدا للمواقع المصرية المستندة الى وجود فعلى ثابت يتمثل فى أعمدة ظلت باقية منذ عام ١٩١٥ على الأقل ، ومؤكد بحسب نهاية الفقرة ٢١٠ من الحكم أن :

«the demarcated boundary line would prevail over the Agreement if a contradiction could be detected. As has been stated, no such contradiction exists».

٤٧ — وخلاصة القول ، أن هيئة التحكيم كان بوسعها أن تكتفى برفض الادعاءات الاسرائيلية المتعلقة بمحاولة طمس المعالم الجغرافية الحقيقية واستبدالها بواقع مغاير من نسج الخيال لأماكن تطلق عليها أسماء ثبتت تاريخيا لمواقع مغايرة ، مثلما يحدث لو أطلق شخص اسم « افريقيـــا » على القارة الأوربية ، أو سعى الى اقناع الناس بأن « آســـيا » من الأجدر ان يطلق عليها اسم أمريكا اللاتينية •

بيد أن هيئة التحكيم أرادت ان تقفل الطريق مستقبلا أمام أولئك

الذين قد تسول لهم أنفسهم تكرار المسلك الاسرائيلي المعيب ، ولذلك انتهزت الفرصة لارساء القاعدة الأصولية التى مقتضاها أن الهيئة :

«has to base its decision on the recognized international boundary as it existed between Egypt and Palestine during the period of the British mandate. The 1986 Agreement is therefore to be taken into consideration only in order to clarify the situation which existed during this period» (§ 200).

٤٨ — وكانت هيئة التحكيم قد رفضت فى فقرة سابقة الحجة الاسرائيلية الساعية الى تفسير الاشارة الواردة فى معاهدة السلام المصرية الاسرائيلية بشأن « الحدود الدولية المعترف بها بين مصر وفلسطين تحت الانتداب البريطانى » على أساس أن المقصود هو خط الحدود القانونى (legal line) كما حددته اتفاقية ١٩٠٦ وليس خط الحدود من الناحية الواقعية كما تعكسه العلامات القائمة بالفعل . وانتهت الهيئة فى رفضها للتفسير الاسرائيلى المذكور الى (تقرير) انها :

— «have to decide the location of the fourteen boundary pillars on the basis of the boundary between Egypt and former mandated territory of Palestine as it was demarcated, consolidated, and commonly understood during the period of the Mandate (29 September 1923-14 May 1948, also referred to as «the critical period »).

— «In so far as there are doubts as to where the boundary pillars stood during the period of the Mandate or for confirmation of its findings, the Tribunal, for its part, will also consider the 1906 Agreement, but merely as an indice among others, as to what was the situation on the ground during the critical period» (§ 172-173).

٤٩ — وبعد أن توصلت هيئة التحكيم الى قضائها بالنسبة للعلامات ٨٥ و ٨٦ و ٨٧ ، كان من اليسير عليها أن ترجح الموقع المصرى للعلامة التى اتفق الطرفان أثناء مباحثات اللجنة الفنية المشتركة

عام ١٩٨١ على اضافتها ، على أن تحمل هذه العلامة المستحدثة رقم ٨٨ • فالنهج الذى قررت هيئة التحكيم أن تلتزمه لتحديد المكان الأنسب لهذه العلامة الجديدة تلخص فى القول بأنه :

«Since no previous pillar 88 is known to have existed, the Tribunal has to choose the one of the two locations which fits more logically into the context of the neighbouring pillars» (§ 213).

٥٠ — ونظرا لغياب أية اعتبارات خاصة تبرر الأخذ بمعيار معين، لم تجد هيئة التحكيم أمامها من خيار سوى تفضيل الموقع المؤدى الى استقامة خط الحدود مؤكدة أنه :

«As no other criterion is available, the Tribunal has to base its decision on the straight line criterion to which the parties to the 1906 Agreement repeatedly referred during their negotiations leading to the conclusion of the Agreement (......) and which has already been used by the Tribunal with regard to several of the northern pillars» (§ 213).

ووفقا لهذا المعيار انتهت هيئة التحكيم الى القضاء لصالح الموقع المصرى المقترح للعلامة رقم ٨٨ المستحدثة ، بمعنى أن المحصلة النهائية بالنسبة لمختلف العلامات الواقعة بمنطقة رأس النقب ذات الأهميـة الاستراتيجية البالغة هى الأخذ بوجهة النظر المصرية كاملة غير منقوصة، وبذلك تأكدت السيادة المصرية على كل شـبر من العشرة كيلومترات المربعة التى تتحكم بموقعها الجغرافى المتميز فى شبه جزيرة سـيناء بأكملها والتى كان السعى من جانب اسرائيل لانتزاعها هو الهـدف الحقيقى من المواجهة التى بدأت فى أواخر عام ١٩٨١ ولم تحسم الا بصدور حكم التحكيم فى ٢٩ سبتمبر ١٩٨٨ •

الفصـــل الثـــالث

علامة الحدود الأخيرة بمنطقة رأس طابا

٥١ ـــ استحوذت علامة الحدود الواقعة قرب شاطىء طابا على خليج العقبة بقدر كبير من الاهتمام خلال مراحل التحكيم لمـــا أثـــاره تحديدها من جدل قانونى ناتج عن الخلاف حول دلالة صورة فوتوغرافية كانت مصر قد قدمتها كأحد مستنداتها ويعود تاريخها الى ٣١ ديسمبـــر ١٩٠٦ ٠

ذلك أن الضابط البريطانى الذى كان قد تم تعيينه حينذاك حاكما لسيناء كممثل للسلطه المصرية واسمه « باركر » قام بحسب المذكرات التى عثر عليها قبيل بداية التحكيم لدى ابنته بتسجيل واقعة اقامة البناء الحجرى لعلامة الحدود الأولى من ناحية خليج العقبة فى ذلك اليـــوم (١٩٠٦/١٢/٣١) ٠ وأخذ باركر مع أعضاء الوفد العثمانى صـــورا فوتوغرافية وضع عليها بخط يده ما يفيد أنها تمثل ذلك الحدث ، ويبين منها بوضوح حجم ومعالم البناء الذى حمل رقم ٩١ ٠

وجاءت المذكرة الكتابية الأولى (Memorial) التى تقدمت بها مصر مشيرة من بين حجج أخرى عديدة الى ان الصور المذكورة تؤكد صحة الموقع الذى حددته مصر للعلامة رقم ٩١ المتنازع عليها فـــوق المرتفعات المحيطه بوادى طابا من الناحية الشمالية ، وتدحض فى ذات الوقت الموقعين المقترحين من الجانب الاسرائيلى سواء على الصخرة الجرانيتية الواقعة على الشاطىء مباشرة أو على مقربة من بئر طابا فى جنوب الوادى ٠

وهللت اسرائيل فى مذكرتها المضادة (Counter - Memorial) بالصور المذكورة التى اعتبرتها مستندا يمكن أن تستغله لصالحها ، وذلك باعتبار أنه عند التدقيق فى تلك الصور يتضح أن الموقع الذى أقيمت عليه العلامة رقم ٩١ لا يمكن أن يكون على ارتفاع ٢٩٨ قدما فوق سطح

البحر كما ورد فى بطاقة الوصف للمــوقع المصرى المقترح فى ملحق مشارطة التحكيم ، فضلا عن أن موقع علامة باركر أقرب بكثير الى مياه خليج العقبة من الموقع الذى تتمسك به مصروفقا لمشارطة التحكيم . ومن ناحية أخرى ، فمن المعلوم كما أوضحت اسرائيل ان موقع علامة باركر قد زال ماديا من الوجود نتيجة ازالة الجرف الذى كانت العلامة قائمة عليه عندما قامت السلطات الاسرائيلية بشق طريق ساحلى جديد من ايلات الى طابا حوالى عام ١٩٧٠ أثناء احتلالها لسيناء .

وتأسيسا على ذلك ، لجأت اسرائيل الى محاولة صرف الأنظــار عن الحجج الأخرى التى أوردتها مصر تأكيدا لموقفها فى شأن عــلامة الحدود رقم ٩١ ، وذلك بالتركيز على الادعاء بأن مصر عندما قــدمت صور باركر قد أقامت بنفسها الدليل على فساد دعواها بالنسبة لموقع العلامة رقم ٩١ ، وبالتالى فانه من وجهة النظر الاسرائيلية يتعين رفض المطلب المصرى حتى ولو توصلت هيئة التحكيم الى القناعة بعدم سلامة أى من الموقعين الآخرين الذين تتمسك بهما اسرائيل . فالحل حينذاك يجب من منطلق تلك الحجة الاسرائيلية أن يكون حكما سلبيا ، بمعنى أن ترفض هيئة التحكيم دعوى الطرفين ولا تقوم بتأييد أى من المواقع الثلاثة الوارد بيانها فى بطاقتى الوصف الملحقتين بمشارطة التحكيم .

٥٢ — والى جانب هذا المطلب الاسرائيلى الذى تم تقديمه لهيئة التحكيم بقصد منعها من اصدار قرار فى شأن علامة الحدود رقم ٩١ ، سعت اسرائيل الى التركيز على حجج أخرى متباينة لتبرير وجوب رفض الموقع المصرى المقترح للعلامة رقم ٩١ حسبما ورد فى بطاقة الوصف الملحقة بمشارطة التحكيم . والحجة الرئيسية التى تعد حجر الأساس بالنسبة للنظرية الاسرائيلية يمكن تلخيصها على النحو التالى :

اذا كان من غير المجحود أن هناك آثارا لعلامة كانت قائمة فى الموقع المصرى وأن تلك العلامة ظهرت على كافة الخرائط المعتمدة بما فيها الخرائط الرسمية الاسرائيلية السابقة على نشأة النزاع ، فان الموقع المذكور لا يمثل حسب مفهوم الدفاع الاسرائيلى نقطة حدود

معترف بها بهذا الوصف ، حيث انها لا تعدو أن تكون نقطة مثلثات شبكية أخطأ واضعوا الخرائط البريطانية عام ١٩١٥ (نيوكامب وفريقه من الخبراء العسكريين) وأدخلوها فى عداد علامات الحدود على خلاف مقتضيات الترسيم الذى تم أصلا فى سبتمبر ١٩٠٦ بالأعمدة التلغرافية بالتنفيذ لاتفاقية عام ١٩٠٦ •

ذلك أنه وفقا للتصور الاسرائيلى ، فان باركر عندما وضع الأعمدة المنشأة بالبناء الحجرى عقب ذلك بشهور (فى ديسمبر ١٩٠٦ — يناير ١٩٠٧) قد ارتكب خطأ ماديا انتقل الى كافة الخرائط التالية • ولا ينحصر هذا الخطأ المـادى فى اختيار موقع علامته المشهورة (رقم ٩١ حينذاك) ، وانما يشمل كذلك موقع العلامة السابقة عليها ، وهى العلامة المدعى بأنه قد تم بناؤها أصلا كمثلث حسابات فلكية ، ثم صارت تعامل فيما بعد بوصفها علامة حدود ، وهو أمر تزعم اسرائيل أنه تم دون سند قانونى •

وبعبارة أخرى ، فان الموقع المصرى للعلامة رقم ٩١ بحسب مشارطة التحكيم لا يصح — بحسب المفهوم الاسرائيلى — وصفه بأنه يمثل علامة الحدود الأخيرة بالنظر الى ما كان قائما قبل زوال علامة باركر من الوجود ، فضلا عن ان هذه الأخيرة لم يكن يصح أيضا الاعتداد بها خلال فترة وجودها بمقولة أن باركر قد أقامها فى موضع غير سليم وفقا لأحكام اتفاقية عام ١٩٠٦ •

٥٣ — وقد أحدث التصوير الاسرائيلى السالف شرحه أثرا مزعجا فى أول الأمر داخل فريق الدفاع المصرى على نحو ما أوضحه الأستاذ الدكتور يونان لبيب رزق فى الفصل الثامن من مؤلفه : « طابا قضية العصر » القاهرة ، ١٩٨٩ ، تحت عنوان : « القصة الكاملة لعمود باركر » (وبخاصة فى صفحة ١٥٩) ، اذ أعتقد البعض أنه يجب عدم التسليم تحت أى ظروف من الظروف بأن هناك علامة أخيرة تعرف باسم « علامة باركر » كانت موجودة فى وقت من الأوقات على حافة الربوة

بمكان آخر غير الموقع الذى حددته مصر فى ملحق مشارطة التحكيم كموقع للعلامة رقم ٩١ • هذا فى حين رأى البعض الآخر أن هــذه حقيقة واضحة لكل من يتدبر الأصول التاريخية لعملية ترسيم الحدود فى ضوء الوثائق والمستندات المعتمدة ولا ضير على مستقبل القضية من التسليم بأن الموقع المصرى لعلامة الحدود الأخيرة حاليا كان فيما مضى

هو موقع العلامة قبل الأخيرة التى تحمل رقم ٩٠ ، لأنه من الطبيعى — وقد اتفق الطرفان المصرى والاسرائيلى أثناء عمل اللجان الفنية عام ١٩٨١ على اضافة علامة حدود مستحدثة تحت رقم ٨٨ — كما سلف البيان فى الفصل السابق — فان العلامة رقم ٨٨ سابقا تصــير ٨٩ ، والعلامة التالية ٨٩ سابقا تحمل الآن رقم ٩٠ ، وكذلك فان العلامة المعروفة أصلا برقم ٩٠ والواقعة على ارتفاع ٢٩٨ قدما فوق سطح البحر تصير هى العلامة رقم ٩١ فى ظل مشارطة التحكيم وتعد فى ذات الوقت هى آخر علامات الحدود القائمة • ولو كانت « علامة باركر » لا زالت موجودة ولم تقم اسرائيل بازالة موقعها لتوسيع الطريق ابان احتلالها للمنطقة لكان رقمها اليوم هو ٩٢ •

وقد شاءت ارادة الله تعالى حتى تكسب مصر قضيتها أن ينتصر هذا الرأى الأخير الذى يتسم ليس فقط بالصدق والأمانة ، وانمــا أيضا بالذكاء الاستراتيجى والادراك العميق لعلم النفس القضــائى الذى يوجب احترام الملكات الذهنية لأعضاء هيئة التحكيم وقدرتهم على الاستنباط المنطقى للأحداث فى تداعيها التاريخى • فالثابت على نحو ما سنوضح فيما يلى أن حكم هيئة التحكيم قد اعتمد أساسا فى القضاء لصالح الموقع المصرى على سابقة وجود « علامة باركر » وعلاقة هذه العلامة بتلك التى كانت تسبقها مباشرة : أى العلامة رقم ٩٠ قديما والتى صارت رقم ٩١ بعد اعادة التــرقيم الذى تم فى عــام ١٩٨١ بواسطة اللجنة المشتركة المصرية الاسرائيلية •

٥٤ — وقد بدأت هيئة التحكيم معالجة موضوع العلامة الأخيرة

رقم ٩١ بالتأكيد فى الفقرتين ٢١٥ و ٢١٦ على الأهمية الكبرى لما ثار أمامها خلال المرحلتين الكتابية والشفوية من مناقشات حول « صور باركر الفوتوغرافية » وما كان لهذه الصور من « انعكاسات واسعة النطاق على مطالبات الطرفين فيما يتعلق بالعلامة رقم ٩١ » ٠

وخصصت هيئة التحكيم أربعة فقرات كاملة من حكمها (الفقرات ٢٣٠ ـ ٢٣٣) لاستخلاص الدلالات المستفادة من واقعة الوجود المؤكد لعلامة باركر ، وانتهت فى الفقرة ٢٣٣ الى رفض كافة الادعاءات الاسرائيلية المثارة فى شأن دور باركر وحقيقة ما قام به ، قائلة :

«The Tribunal therefore comes to the conclusion that, even if Parker had not been properly empowered to represent Egypt in the Joint Commission and even if the Parker pillar had not been placed at the same location as the telegraph Pole-assumptions for which no evidence could be found - the parties to the Agreement of 1906 had, by their conduct, agreed to the boundary as it was demarcated by masonary pillars in 1906-07 and to the location of the Parker pillar as the final pillar of the poundary line at the time».

وعند التحليل الدقيق لما خلصت اليه هيئة التحكيم فى هذا الصدد ، تجدر الاشارة الى أن هيئة التحكيم بعد أن اطمأنت الى وجود علامة باركر بوصفها تمثل العلامة الأخيرة على خط الحدود كما تم افراغه على الطبيعة فى ١٩٠٦ ـ ١٩٠٧ ، كان بوسعها الاكتفاء لرفض النظرية الاسرائيلية بمجرد تقرير أن اسرائيل قد عجزت عن اثبات واقعة أن البناء الحجرى للعلامة تحقق فى مكان آخر غير موقع العامود التلغرافى المقام فى سبتمبر ١٩٠٦ ٠ ولكن هيئة التحكيم آثرت ألا تقف عند ذلك الحد المتعلق بالاثبات والكافى بذاته لرفض المفهوم الاسرائيلى ، ووجدت من الأنسب أن تستطرد لتأكيد أن المسلك اللاحق للأطراف المعنية يعطى سندا قانونيا اضافيا لضرورة الاعتداد بعلامة باركر ٠ فوجود ممثلى الجانب التركى وعدم اعتراضهم وغياب أى احتجاج

لاحق من جانب الدولة العثمانية على موقع علامة باركر أعطى لهـذه الأخيرة شرعية قانونية مؤكدة .

٥٥ — واستطردت هيئة التحكيم فى الفقرتين التاليتين من حكمها (٢٣٤ و ٢٣٥) إلى معالجة الادعـاء الاسرائيلى القائل بأن المـوقع المصرى المقترح للعلامة رقم ٩١ كان مجرد نقطة مثلثات شبكية عوملت خطأ كعلامة حدود بواسطة نيوكامب واضع الخريطة البريطانية لعام ١٩١٥ .

فقد وصفت هيئة التحكيم الادعاءات الاسرائيلية فى هذا الصدد بأنها « مجرد افتراضات » لا يساندها برهان ، فى حين أن الهيئة يجب أن « تؤسس قرارها على وقائع ثابتة لا يرقى اليها الشك » . وجاء رفض التصور الاسرائيلى فى ختام الفقرة ٢٣٥ من الحكم عن طريق عبارات قاطعة الدلالة وتحتوى على تقريع لاذع ، حيث نص على أن :

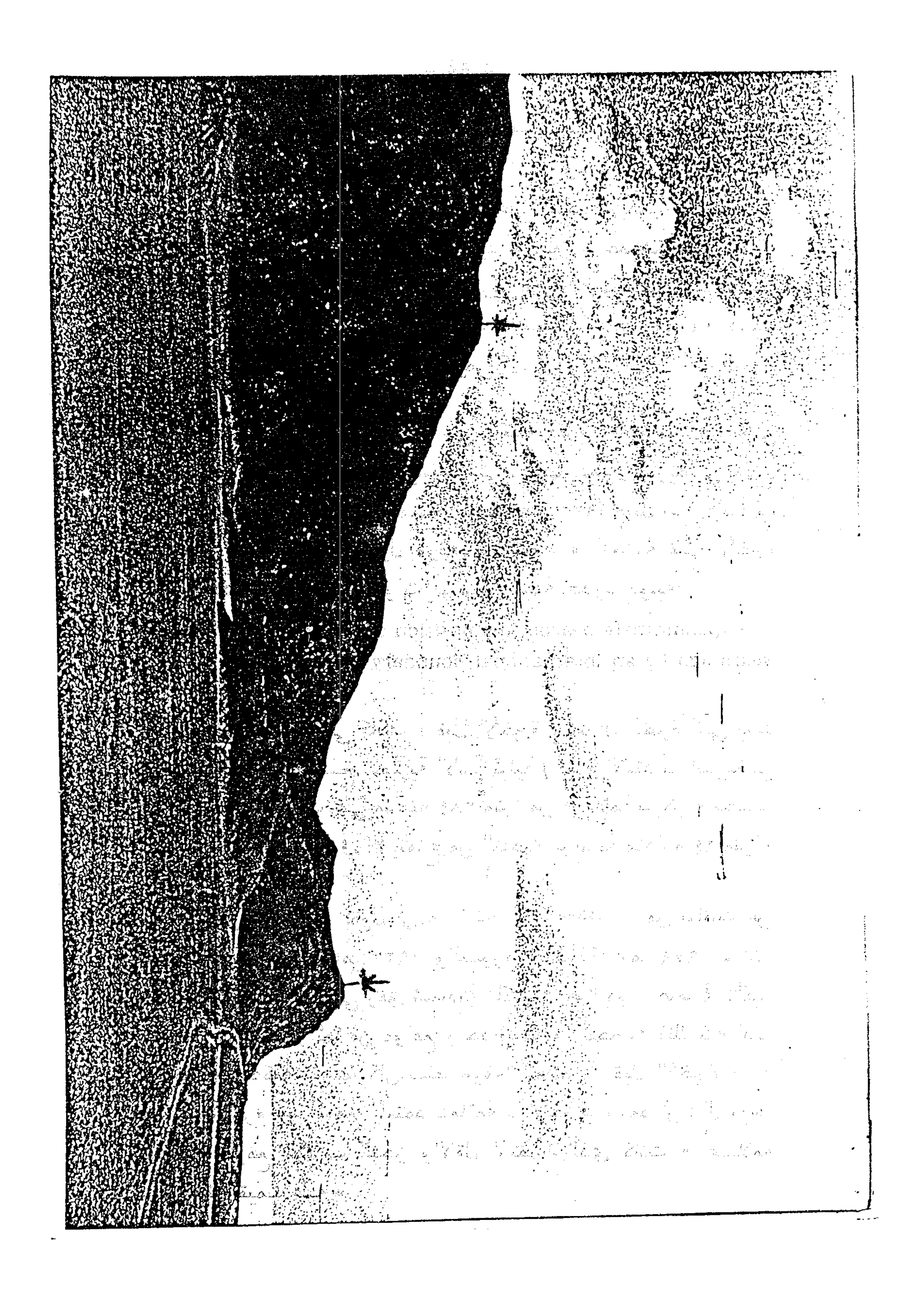
«The Israeli submission is all the more unfounded as not even Israel itself considers the different elements of its argutmentation - the mistake of the map construction, the destruction of the trig point marker by the Turks, and the erroneous rebuilding of a boundary pillar - as proven, but only as possibilities».

٥٦ — وكانت هيئة التحكيم قد كشفت فى الشق الأول من ذات الفقرة ٢٣٥ عما اعتبرته وقائع ثابتة ليست محلا للشك ، وتتلخص فى الآتـى :

«It is not contested that at least from around 1917 and throughout the crticial period until a time after 1967 there was a boundary pillar at the location of BP 91 (E) which, during this whole period, was condidered to be a boundary pillar. It was marked as such on the ground, on maps, on trig lists, and affirmed by photographs. This suggests that throughout the Mandate period both Egypt and Great Britain treated it as a boundary pillar».

وتجدر الاشارة الى أن هيئة التحكيم قد اعتمدت فى هذا المجال على عدة عناصر للاثبات تضافرت جميعها لتأكيد وجود علامة حدود كانت تحمل سابقا رقم ٩٠ فى ذات الموقع الذى حددته مصر للعلامة رقم ٩١ بحسب الترقيم الجديد الذى نتج عن استحداث علامة جديدة تحت رقم ٨٨ فى عام ١٩٨١ • فالخرائط جميعها التى تم وضعها خلال فترة الانتداب البريطانى على فلسطين تنطق بوجود العلامة المذكورة فى موقعها المحدد ، واحداثياتها ثابتة ومؤكدة فى أكثر من وثيقة رسمية • ولا يوجد منطقيا ما يمنع علامة الحدود أن تتخذ فى ذات الوقت نقطة مثلثات شبكية ، وهذا هو ما تم التأكد منه بالفعل عن طريق استقراء الأعمال التحضيرية التى صاحبت اعداد نيوكامب للخريطة الحربية البريطانية عام ١٩١٥ التى ثبتت لهيئة التحكيم صحتها وتأكدت الارتفاعات والاحداثيات الواردة بها فى كافة المناسبات اللاحقة عند اجراء مسح فى سبيل اعداد خرائط جديدة •

ويبدو أن هناك صورة فوتوغرافية قدمتها اسرائيل ضمن صور أخرى قبيل بدء المرافعات الشفوية كان لها دور حاسم فى تكوين يقين المحكمة بالنسبة لصحة الموقع المصرى • ونحيل فى شرح الظروف التى أحاطت بالتصرف الاسرائيلى فى هذا المجال الى ما سجله الأستاذ الدكتور يونان لبيب رزق فى الفصل الخامس عشر من مؤلفه « طابا قضية العصر » وهو الفصل المعنون « على وعلى أعدائى » (ص ٣٠٣ وما بعدها) • والصورة المعنية هى الواردة بالشكل رقم ٢١ فى صفحة ٣٠٧ من كتاب الدكتور يونان ونعيد نشرها رفق هذا بحجم أكبر •



وهذه هى الصورة التى قدمها الضابط الاسرائيلى السابق ياكوف سار على أساس أن تاريخها هو مارس ١٩٤٩ وتحت عنوان : « علامة حدود مصرية على قمة صخرة مطـلة على البحر الأحمر جنـوب ام الرشراش » ، ويبين منها بوضوح وجود علامتين ، احداهما على ارتفاع منخفض قرب الشاطئ ، وهى علامة باركر ، والأخرى أكثر ارتفاعا نحو الداخل وهى فى ذات الموقع الذى حددته مصر للعلامة رقم ٩١ حسب بطاقة الوصف الملحقه بمشارطة التحكيم •

فالصورة المذكورة اللاحقة على انتهاء فترة الانتداب البريطانى تثبت على وجه اليقين صحة البيانات التى سجلها الخبير البريطانى بيدنل (Beadnell) عندما قام بمسح المنطقة عام ١٩٢٢ قبيل بدء الانتداب البريطانى على فلسطين حول موقع ما أسماه « العلامة قبل الأخيرة التى تحدد موقعها منذ سنوات بواسطة لجنة حدود دولية » •

«penultimate beacon, the position of which was determined years ago by an international boundary commission».

وهذه العلامة التى كانت « قبل الأخيرة » طوال الفترة التى يعتد بها حسب معاهدة الصلح المصرية الاسرائيلية (فترة الانتداب البريطانى على فلسطين) أقيمت على مسافة ٢٨٤ مترا من « علامة باركر » بحسب البعد الأفقى ، وبفارق فى الارتفاع من الناحية الرأسية مقداره ٦٤ مترا•

ويمكن باطمئنان القول أن ما خلفه Beadnell من بيانات عن المسح الذى أجراه عام ١٩٢٢ والصورة المأخوذة عام ١٩٤٩ والتى قدمها الضابط الاسرائيلى رفق شهادته المكتوبة لعبتا دورا هاما فى تأكيد صحة ما ورد بالخرائط من مواقع واحداثيات • ومحصلة ذلك كله أدت الى قناعة المحكمة بأن ما كان سلفا موقعا للعلامة « قبل الأخيرة » قد صار بالضرورة هو الموقع المعتمد للعلامة « الأخيرة » بعد ان زال بفعل اسرائيل الموقع الأقرب للبحر والاقل ارتفاعا الذى كانت « عـلامة باركر » قد أقيمت عليه •

٥٧ — وازاء هذه الواقعة التى ثبتت يقينا فى ضمير هيئة التحكيم، لم يكن هناك بد من انزال حكم القانون الدولى الذى يوجب احترام الحدود الثابتة وضرورة استقرارها ، وهو ما أكده الحكم فى الفقرة ٢٣٥ بقوله :

«The Tribunal considers that where the State concerned have, over a period of more than fifty years, identified a marker as a boundary pillar and acted upon that basis, it is no longer open to one of the Parties or to third States to challenge that longheld assumption on the basis of a alleged error. The principle of the stability of boundries, confimed by the International Court of Justice (.........), requires that boundary markers, long accepted as such by the States concerned, should be respected and not open to challenge indefinitely on the basis of error».

٥٨ — ومؤدى هذه النتيجة القانونية الحكم لصالح الموقع المصرى دون حاجة الى مزيد من البحث حول الادعاءات الاسرائيلية المتعلقة بأن وضع علامة الحدود المذكورة قد تم بالمخالفة لاتفاقية ١٩٠٦ أو لأى سبب آخر •

ولكن سدا للذرائع واستكمالا لمناقشة كافة الحجج المثارة ، لجأت هيئة التحكيم الى الرد على جميع الطلبات الاسرائيلية ، وعلى رأسها أهم حجة ضد الموقع المصرى للعلامة رقم ٩١ من حيث أنه لا يحقق الرؤية المتبادلة (Intervisibility) التى نصت عليها المادة ٣ من اتفاقية عام ١٩٠٦ ، بمعنى أنه لا يوفر رؤية متبادلة مع العلامة السابقة رقم ٩٠ (٨٩ بحسب الترقيم الأول ، قبل اضافة علامة مستحدثة تحت رقم ٨٨ بواسطة اللجنة المشتركة المصرية الاسرائيلية فى عام ١٩٨١) ، هذا فى حين أن الموقعين المقترحين من جانب اسرائيل يحققان الرؤية المتبادلة مع العلامة رقم ٩٠ غير المتنازع عليها بين الطرفين •

٥٩ — وكانت مصر قد ردت على هذه الحجة الاسرائيلية عن طريق اثبات أنه لا يتوافر أى أثر يدل على انه فى تاريخ معين قد تحقق وجود علامة حدود فى أى من الموقعين الاسرائيلين المقترحين ، فضـلا عن أن اشتراط توافر الرؤية المتبادلة لم يكن متطلبا على نحو الزامى واجب الاتباع بالنسبة لكل علامة من علامات الحدود .

فهو مطلب منطقى ولازم فى الجزء الشمالى من الحـدود بالنظر الى طبيعتها الصحراوية كمنطقة لا يعتور استوائها سوى بعض الكثبان الرملية المحدودة الارتفاع . أما فى الجزء الجنوبى من الحدود الذى تسوده المرتفعات الجبلية ، فان ترسيم الحدود قد اكتفى فيه بالاشارة الى بعض الشواهد الثابتة التى اعتمدتها اتفاقية عام ١٩٠٦ بالنص على أن العلامات انما يتم وضعها « على طول امتداد السلسلة الجبليـة الشرقية المطلة على وادى طابا » .

ومذكـرات Wade قاطعة الدلالة على أن هذا هو بالفعل ما قامت باتباعه اللجنة التى أنيط بها وضع علامات الحدود ، فقد أشارت من أسفل الوادى الى مكان العلامات الثلاثة الأخيرة دون أن تعنى بالصعود الى المرتفعات الجبلية للتأكد من الرؤية المتبادلة بين كل علامة والأخرى .

٦٠ — وقد قامت هيئة التحكيم بترجيح التفسير المصرى لاتفاقية عام ١٩٠٦ ، وذلك بالنص فى الفقرة ٢٣٧ على أن محصلة الاعتبارات التى صاحبت عملية ترسيم الحدود تؤدى الى تبرير :

«Why intervisibility was not observed although there is no absolute certainty in this respect».

وفى غياب رأى قاطع يمكن الوصول اليه باطمئنان كامل حول عدم ضرورة توافر الرؤية المتبادلة بين العلامة رقم ٩١ والعلامة رقم ٩٠ ، انتهت هيئة التحكيم الى حسم المسألة من منطلق آخر مؤداه أن الاطراف المعنية قد قبلت بارادتها المختارة عدم التقيد بهذا المطلب ، حيث ذكرت فى نهاية الفقرة ٢٣٧ من الحكم :

«However, as the Tribunal has already come to the conclusion that both the Parker pillar location and the location of BP 91 (E) were recognized by the States concerned as forming part of the boundary line during the critical period, lack of intervisibility cannot affect this finding since the boundary line, in spite of non-intervisibility, was accepted by the Part ies concer -ned».

ويمكن تأصيل هذه النتيجة باعتبارها بمثابة تطبيق لمبدأ سلطان الارادة ، بمعنى أن الأطراف المعنية لها أن تلجأ فى صدد خصوصية معينة للخروج عن مبدأ عام سبق الاتفاق عليه ، ومثل هذا الخـروج يعتد به كنوع من التصرف الارادى المستقل الذى يقيد بخصوصيته المبدأ العام الذى يقتصر نطاقه على المجالات الأخرى •

٦١ — وكانت اسرائيل قد استندت الى مزيج من الاعتراضات الأخرى التكميلية ، نجملها فيما يلى :

(أ) محاولة قراءة الخرائط القديمة للمنطقة على نحو مؤداه أن خط الحدود يمر على حافة مثلث الحساب الفلكى الواقع على الصخرة الجرانيتية المقاربة للشاطىء ، وهى الصخره التى بنت اسرائيل بجوارها الفندق السياحى •

(ب) الاستناد الى عبارة وردت فى الكتاب الاحصائى السنوى عن مصر الصادر عام ١٩٠٩ ، حيث تضمنت الطبعة المذكورة عبـارة مقتضاها أن الحدود تنتهى عند الصخرة الجرانيتية •

(جـ) التمسك ببعض ما ورد فى كتب الرحالة الذين جابوا المنطقة فى أعقاب عام ١٩٠٦ ويشيرون الى وجود عثمانى فى وادى طابا ، وكذلك ما جاء فى تقرير منسوب للمخابرات البريطانية بالسودان قبيل الحرب العالمية الأولى حول شائعات عن وجود مدفع عثمانى فى المنطقة •

٦٢ — ولم يكن من العسير على الجـانب المصرى دحض تلك

الحجج الاسرائيلية ، وذلك على نحو يمكن تلخيصه بما يلى :

(أ) الخرائط الأربعة القديمه التى تمسك بها الدفاع الاسرائيلى لتقريب خط الحدود من الصخرة الجرانيتية تتسم بأنها جميعها صغيرة الحجم من حيث مقاس الرسم بحيث لا تصلح دليلا ، فضلا عن أنها لم تعد بالأساليب الفنية الدقيقة بعد مسح على الطبيعة بحيث جاءت أقرب الى الكروكى ذى الطابع التقريبى الذى يصعب الاعتماد عليه علميا • وتتضح هذه الخاصية عند مقارنة الخرائط الأربعه المذكورة بالخرائط الأخرى العديدة ، وخاصة تلك التى تتعلق بالحقبة الزمنية التى يطلق عليها تعبير « الفترة الحرجة » (critical period) الواجب الاعتداد بها وهى فترة الانتداب البريطانى (١٩٢٣ — ١٩٤٨)•

فالمؤكد انه بعد اجراء المسح الجغرافى للمنطقة قبيل الحرب العالمية الأولى صار اجماع كافة الخرائط المعدة وفقا لأسس علمية دقيقة وبمقاييس كبيرة نسبيا على أن خط الحدود فيما بين العلامات الثلاثة الأخيرة انما يمر على الجانب الشرقى للمرتفعات الواقعة شمال وادى طابا ، وذلك بعيدا على نحو ملحوظ من مثلث الحساب الفلكى القائم على قمة الصخرة الجرانيتية •

(ب) وفيما يتعلق بالكتاب الاحصائى السنوى الذى صدر عن الحكومة المصرية لأول مرة عام ١٩٠٩ ، فانه لم يكن من اغراضه المقصودة بيان حدود الاقليم المصرى على نحو دقيق ، وانما تناول المسألة عرضا عن طريق اعطاء وصف تقريبى عن طريق الأشارة الى احد المعالم الجغرافية الواضحة فى تلك المنطقة والذى استخدمت أحداثياته لبيان موقع محطة الحساب الفلكى • وقد زالت الاشارة الى هذا المكان الجغرافى فى جميع الطبعات التالية للكتاب الاحصائى المصرى رفعا لأية شبهة ، فلم يتكرر ذلك البيان فى أى من السنوات التالية •

(ج) وأخيرا ، فان العبارات الواردة فى كتابات بعض الرحالة الأجانب الذين جابوا المنطقة وفى مذكرات المخابرات البريطانية حول

زعم وجود تركى فى وادى طابا هى مجرد ادعاءات يعوزها الدليل ، وحتى بفرض صحتها فيمكن تبرير ذلك الوجود بأن الجنود الأتراك كان من حقهم الحصول على المياه من بئر طابا وعبور الحدود لهـذا الغرض اعمالا لحكم المـادة ٦ من اتفاقية عام ١٩٠٦ •

٦٣ — واذا كانت هيئة التحكيم لم تجد صعوبة تذكر فى رفض اضفاء أية قيمة من حيث الاثبات للادعاءات الاسرائيلية السالف الاشارة اليها والتى لا تعدو أن تكون مجرد تشكيكات عارية من أى دليل بالمعنى القانونى السليم (الفقرات ٢١٩ — ٢٢١ من الحكم) ، فان الموقعين الذين أقترحتهما اسرائيل قد أعلنت هيئة التحكيم استبعادهما نهـائيا لاعتبارين أساسيين أوردهما الحكم فى الفقرتين ٢٢٢ و ٣٢٢ بقوله :

— «If the Parker was in fact the first (or final) pillar of the boundary line as recognized during the critical period, it excludes both locations proposed by Israel for BP 91».

— «At neither of its locations could Israel show any evidence of pillar remnants.

Nor was Israel able to produce any photographic or map or other evidence showing that telegraph poles or boundary pillars has existed at either location at any time».

٦٤ — وقد أضافت هيئة التحكيم فى الفقرتين التاليتين (٢٢٤ و ٢٢٥) اعتبارا جغرافيا تكميليا مسـتفادا من عدم مطابقة المـوقعين الاسرائيلين لوصفين هامين اقتضهما اتفاقية ١٩٠٦ عندما حددت ان الخط الفاصل الذى يبدأ عند رأس طابا انما يسير على امتداد السلسلة الجبلية الشرقية المطلة على رأس طابا ، وكذلك تمت الاشارة فى التقرير المرفق بالاتفاقية الى ضرورة أن تكون هناك نقطة التقاء بالخليج من جانب الجرف الشرقى الذى تقع عليه العلامة الأخيرة •

وعلى العكس من ذلك تماما ، فان هيئة التحكيم عندما عرضـت فى الفقرتين ٢٤٣ و ٢٤٤ من حكمها لعبارة « عند نقطة رأس طابا على

الساحل الغربى لخليج العقبة » (الواردة فى ملحق مشارطة التحكيم مأخوذة عن المادة الأولى من اتفاقية ١٩٠٦) أعطتها مفهوما يتسع ليشمل الموقع المصرى للعلامة رقم ٩١ ، وذلك باعتبار أنها تقع على سلسلة الجبال شرقى طابا على مسافة غير بعيدة من الشاطىء ومرئية منه •

٦٥ — وباستبعاد التفسيرات الاسرائيلية لاتفاقية ١٩٠٦ التى لم تكن اسرائيل طرفا فيها أو خلفا لأحد طرفيها ، واقرار أن الموقع المصرى للعلامة رقم ٩١ يصدق فى شأنه الوصف المطلوب بمقتضى كل من اتفاقية ١٩٠٦ ومشارطة التحكيم ، لم يتبق أمام هيئة التحكيم سوى اعتراض وحيد يتعين الفصل فيه ، وهو المتعلق بادعاء اسرائيل أن الموقع المصرى لا يمكن أن يكون هو « العلامة الاخيرة » بحسب التحديد الوارد فى الفقرة ٢ من ملحق مشارطة التحكيم ، وذلك باعتبار أن وصف « الأخيرة » انما يصدق فقط على « علامة باركر » التى كانت قائمة طوال الفترة الحاسمة محل الاعتبار وهى فترة الانتداب البريطانى على فلسطين •

وجاء الرد المصرى على هذه الحجة مؤكدا من ناحية أولى أن مصر عندما وقعت مشارطة التحكيم وعندما قدمت مذكرة دفاعها الأولى لم تكن على علم بأن العلامة الموجودة فى صور باركر الفوتوغرافية كانت قائمة فى موضع يختلف عن الموقع المصرى المقترح للعلامة رقم ٩١ • ومن ناحية أخرى ، فالعبرة فى تفسير صفة « الاخيرة » كما وردت فى ملحق مشارطة التحكيم بما عليه الحال فى عام ١٩٨٦ عند توقيع المشارطة وليس بما كان موجودا عام ١٩٠٦ أو فى فترة الانتداب البريطانى •

وقد تبنت هيئة التحكيم فى الفقرة ٢٤٢ من حكمها وجهة النظر المصرية التى تتفق مع أصول قواعد التفسير القانونى للنصوص ، حيث أكدت ذلك بقولها :

«It is clear that an indication on the ground would not have been conceivable for the Parker pillar, given the disap-

pearance of its site around 1970. The location of BP 91 (E) was the last pillar location along Egypt's claimed line which in 1986 could be indicated on the ground. BP 91 (E) was also the final or last pillar in the series of fourteen pillars mentioned in the first sentence of paragraph 1 and cannot at the same time be considered to be the «penultimate» pillar in the context of the Compromis.

In view of this situation, it cannot be assumed that a Party to the Compromis could have signed the sentence containing the words «final pillar» having the Parker pillar in mind and with the expectation that BP 91 (E) would thereby be excluded before hand as a possible choice for the location of BP 91. Such conduct would have been contradictory and not consistent with the wish, affirmed by the Parties in the preamble of the Compromis, «to resolve fully ani finally» the dispute betweend them and «to fulfill in good faith their obligations, including their obligations under this Compromis».

It was therefore not incorrect to designate it as the «final pillar» at that moment».

٦٦ — وعند وصلت هيئة التحكيم بهذا التأصيل القانونى السليم الى استبعاد كافة الاعتراضات الشكلية التى أثارتها اسرائيل بقصد منع الهيئة من اصدار حكم لصالح الموقع المصرى للعلامة رقم ٩١ ، لم يعد هناك أدنى مبرر يمكن الاستناد اليه للقول بتوافر حالة من حالات ما يطلق عليه فى الاصطلاح اللاتينى Non Licet ، بمعنى تعذر امكانية الوصول الى قرار بالنسبة لموضوع النزاع .

وبالفعل قضت هيئة التحكيم لصالح الموقع المصرى للعلامة رقم ٩١ مقررة فى نهاية الفقرة ٢٤٤ من حكمها :

«The Tribunal therefore comes to the conclusion that Israel plea of **non licet** cannot be admitted and that Egypt is not precluded from claiming BP 91 (E)».

خاتمـــة

٦٧ ـــ وفى ٢٩ سبتمبر ١٩٨٨ تم اعلان حكم هيئة التحكيم محل البحث وتسليمه رسميا فى احتفال مهيب الى ممثلى الدولتين •

وكما هو الأصل فى الأحكام ، فان الحكم يعد كاشفا ومؤكدا لحقوق قائمة ، بمعنى أنه مجرد تقرير لأحقية مصر فى استرداد المناطق التى كانت اسرائيل تسعى لانتزاعها من الأقليم المصرى بتحريك بعض علامات الحدود نحو الغرب •

وتتمثل الأراضى التى استعادت مصر سيطرتها عليها نتيجة تنفيذ هذا الحكم فى بضع مئات من الأمتار المربعة فى الجـزء الشمالى من الحدود ، وكيلومتر مربع على شاطىء طابا الذى تركزت عليه الأنظار وتعالت فى شأنه الصيحات • ولكن مع كل الاحترام للاعتبارات العاطفية والانفعالات الوطنية ، فان المكسب الأكبر لمصر انما تحقق من وجهـة نظرنا فى منطقة رأس النقب حيث استردت مصر مواقعها الاستراتيجية الحصينة على ما يزيد عن عشرة كليومترات مربعة تعد مفتاح سـيناء العسكرى ، ومن يسيطر عليها يملك زمام المبادرة • وبعبارة أخرى ، فان عودة مصر الى مواقع الحدود القديمة على حافة المرتفعات الشرقية يجعل الجانب الاسرائيلى واقفا على الجانب الآخر فى مواقـع أدنى ارتفاعا وتفصلها عن الهضبة المصرية عوائق طبيعية يصعب اجتياحها •

وفى اعتقاد كاتب هذه الدراســة أن تملك الفنـدق والمستعمرة السياحية على شاطىء طابا لم يكونا منذ البداية الهدف الأساسى الذى تسعى الى تحقيقه السياسة الاسرائيلية من وراء الاصرار على تصعيد النزاع حول اتمام الانسحاب من الاراضى المصرية فى سيناء وعرقلة حله سلميا طوال السنوات من ١٩٨١ الى ١٩٨٦ عندما تم قبول التحكيم على مضض وتحت ضغوط مصرية وأمريكية مكثفة • ذلك أن النفاذ الى أعماق قضية التحكيم والقراءة المتأنية لكافة الوثائق والمستندات قد أعطت انطباعا واضحا بأن الضجة الكبيرة التى اثارها الاعلام قبـل

التحكيم وبعده حول العلامة رقم ٩١ عند رأس طابا انما قصد من ورائها فى الأصل صرف الانظار عن المسعى الحقيقى لمخططى الاستراتيجية الاسرائيلية وهو السيطرة على قمم المرتفعات فى منطقة رأس النقب التى تتحكم — بالنظر الى خصائصها البارزة — فى أهم طرق ومداخل سيناء ، وكيف خاب هذا المسعى فى النهاية عندما خسرت اسرائيل التحكيم وأضطرت الى تنفيذ الحكم •

ونترك للقارىء المهتم بالشئون السياسية الدولية وما يتصل بها من فروع أخرى للمعرفة أن يحكم بنفسه على مدى صحة هذا الرأى بعد قراءة التلخيص الذى أوردناه فى فصول هذا الكتاب لحكم هيئة التحكيم متوخين أكبر قدر ممكن من التحليل الموضوعى بلغة مفهومة حتى لغير المتخصصين فى القانون الدولى • ولهؤلاء الأخيرين وغيرهم من المهتمين أضفنا الملاحق التالية المنقولة حرفيا وبالتصوير الضوئى من مضبطة وقائع جلسات هيئة التحكيم متضمنة شهادة الفريق كمال حسن على ومرافعات البروفسور دريك باوت بالنسبة للعلامة رقم ٩١ مع مرافعاتنا بالنسبة لسائر العلامات المتنازع عليها ، وعلى رأسها العلامات الأربعة فى منطقة رأس النقب التى كانت للكاتب سعادة أن يراها من الطائرة وقد عادت للسيطرة المصرية وهو فى طريقة صباح يوم ١٩ مارس ١٩٨٩ ليحظى بشرف أن يكون ضمن المئات الذين شهدوا على الطبيعة الاحتفال التاريخى برفع العلم المصرى على آخر جزء من التراب الوطنى عاد الى أحضان الأم الحبيبة •

THE TABA ARBITRAL AWARD

(An Analytical Documented Study of Certain Important Aspects)

By

Ahmed Sadek EL-KOSHERI

Professor of International Economic Law

and Vice Rector of the International

University for African Development

Alexandria.

1990

Cairo

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حول الخلفية السياسية للنزاع

(الصفحات ١٨٥ ـ ١٩١)

ANNEX I

EXTRACTS FROM
THE OFFICIAL VERBATIM RECORD
OF
THE ARBITRAL TRIBUNAL'S
HEARING ON 17 MARCH 1988,
MORNING SESSION

THE TESTIMONY
OF
H.E. KAMEL HASSAN ALI
ON THE POLITICAL BACKGROUND
OF THE DISPUTE

(PAGES 185-191)

The President: Would you please read the statement?

H.E. Kamal Hassan Ali: I declare upon my honour and conscience that I will speak the truth, the whole truth, and nothing but the truth.

Prof. Bowett: Your Excellency, would you just give the Tribunal some indication of your personal history and how you personally became involved in the matters which are now before this Tribunal?

H.E. Kamal Hassan Ali: Well, I think it is a long history, I am afraid. But to cut it short, I was assigned as the Chief of Intelligence in 1975, then as the Defence Minister in October 1978, but after three days of this assignment, I was assigned as the Head of the Delegation negotiating the Egyptian-Israeli Treaty in Washington, and then I continued the job till the Treaty was signed. On May '81 I was assigned as the Foreign Minister of Egypt. Then after a few months I was assigned again as the Chief of the Egyptian side in the Joint High Committee between Egypt and Israel to implement the Treaty, and to agree on the normalization issues. Then [PVR 11] to be the Head of the Negotiating Team for the self-autonomy for the Palestinians.

Prof. Bowett: Thank you. Can I just concentrate on the last period when you were Chairman of this High Committee, so this is the period between '81 and '82. As Chairman, in that position, did you ever visit Taba?

H.E. Kamal Hassan Ali: Yes. We visited Taba when the Technical Team didn't come to an agreement. Then Mr. Sharon asked for a higher-level meeting.

Prof. Bowett: Excuse me, who is Mr. Sharon?

H.E. Kamal Hassan Ali: He was the Defence Minister by that time.

Prof. Bowett: The Israeli Defence Minister?

H.E. Kamal Hassan Ali: The Israeli Defence Minister, yes. And then we met in March 1982, in Ras el Naqb Airport. There were discussions between the Technical Teams, but it seems to me that it was a loss of time. So I asked Mr. Sharon to pass on the whole line from Rafa to the north on the Mediterranean till 91 Pillar. And we did this job, but when we reached 89 point, I observed that he diverted the line to the middle of the Wadi Taba. And we went by the helicopter there, he showed me a flat, stoney place, and he said this is Taba Point and the border is here. I told him there is no evidence whatsoever that there is a pillar here. The pillar is on a height, it is not here, and this is a place where usually the Police Post is stationed, and the Police Post is usually situated behind the line of the border and on the line of the border he sends patrols to stay there. So this is not the pillar at all. [PVR 12]

Prof. Bowett: Let me be quite sure exactly where you went to when you were shown the Israeli position. I know it is not easy for you, but you have here a photograph of Wadi Taba. There you have a map. Now you may perhaps prefer to use the map because it is a larger scale. Is it possible to indicate on the map where General Sharon took you to?

H.E. Kamal Hassan Ali: It was just nearby to the palm trees, here.

Prof. Bowett: I see. Is that clear, near to the palm trees?

H.E. Kamal Hassan Ali: And he indicated that the palm trees are the borders.

Prof. Bowett: The witness is pointing just above the word palm trees on the map displayed. All right, Sir, thank you.

H.E. Kamal Hassan Ali: And the flat place was here, just very nearby to it.

Prof. Bowett: What happened then?

H.E. Kamal Hassan Ali: Then I got before some reports from our Technical and Liaison Officer, Admiral Hamdy, that the pillar was there on the height, 91, and that somehow during the work of the Technical Teams it was removed. So I insisted that we have to go by the helicopter to the place of 91. And there I found what Admiral Hamdy said, exactly. I found that the pillar and the cone where the pillar is fixed was removed very recently, and the pole was lying down beside. But there was also four small pillars in the corners of the cone, the construction cone. So I told my friends the [PVR 13] Israelis, and especially General Sion, who is present here, that, General Sion, I am really dismayed because we are implementing the Treaty in a very faithful way since we started. We started with Mr. Ezar Weizman, the former Defence Minister before Mr. Sharon, and when he handed over the airports within Sinai, I asked him, "Ezar, I have to receive these aerodromes painted." [Tape No.50] He accepted that and delivered these aerodromes in a very good way. So I really felt dismayed by this removal of this point on the hill.

Prof. Bowett: Did you say anything else to Sharon?

H.E. Kamal Hassan Ali: Well, actually Mr. Sharon afterwards delivered a visit to Egypt and he asked me to have a tête-à-tête meeting, but my secretary was there, and he told me: "Well, we have to make a compromise -- leave us the area where the hotel is". I told him: "Look here, we are not either to lease or to sell our lands. This is our land and nobody can do it. So please let us continue the Treaty in good faith. And I am ready to buy the hotel", which was not finished and the work at the hotel was stopped since we signed the Treaty, because I am sure everybody was sure that this is not his land and why to finish the hotel when they will deliver it to us?

Prof. Bowett: But Minister why did you offer to buy the hotel?

H.E. Kamal Hassan Ali: During the negotiations we agreed together that all the constructions built by the Israeli side in Sinai should be sold to Egypt as a compensation and we paid about $50 million for Sharm el Sheik and Nuweiba and other parts along this beach of Aqaba, and I thought it would be [PVR 14] better to implement the same agreement on the Taba Hotel.

Prof. Bowett: Now let me just bring you back to this visit to the second location. I think it's important that the Tribunal should see exactly where you went to. Could I trouble you again to take the pointer, use the same map, and show the Tribunal exactly where you went to?

H.E. Kamal Hassan Ali: That's the point.

Prof. Bowett: The witness is pointing to the location marked as 91(E) and you said that is where you found the remnants.

H.E. Kamal Hassan Ali: Yes, and the helicopter was here.

Prof. Bowett: Good. Just one final question, Minister. Did you have any conversation with anybody else whilst you were up at that site?

H.E. Kamal Hassan Ali: Actually, you know, the problem was mentioned and discussed several times with so many officials and during a meeting with the Municipality Mayors of Israel, who paid a visit by invitation of our authorities to Egypt, they met with me in the Foreign Ministry and the Mayor of Eilat said to me: "Mr. Minister, why don't you lease or sell Taba for us, it is the only place as a plage for Eilat, we have no plages". But I immediately responded that:
"Mr. Mayor, our lands are not for sale or for lease but we are ready to give all facilities given to the Israelis along the Aqaba Beach. We are ready to do that, but our lands are not for sale, not for lease" and immediately one of the accompanying officials with the Mayors asked him to stop talking.

Prof. Bowett: May I say, you said Aqaba Beach. Did you mean Aqaba Beach? [PVR 15]

H.E. Kamal Hassan Ali: Yes, the whole Aqaba: Sharm el Sheik, Ras Nosrani, Nuweiba, and other places as at Taba.

Prof. Bowett: I see, so you mean the beach down the Gulf of Aqaba.

H.E. Kamal Hassan Ali: Down the Gulf, yes.

Prof. Bowett: I see. That's all I have, Mr. President. Thank you.

The President: Mr. Lauterpacht, please.

Mr. Sabel: Just a moment for concentration please, Sir.

Mr. Lauterpacht: Thank you, Mr. President, too much paper and too little space is the explanation of my present activities.

Your Excellency, I have only two or three questions to ask you. By the time that you made your visit to Taba with Mr. Sharon were you aware that there was already a dispute regarding title to the area?

H.E. Kamal Hassan Ali: Sure, because I get reports from the Liaison Officer, our Liaison Officer Admiral Hamdy, and he told me that there were disputes in some other points, not only 91.

Mr. Lauterpacht: So that the evidence that you are giving here today is evidence about your activities, your statements, and things that you heard after the dispute between the two sides had arisen?

H.E. Kamal Hassan Ali: Not only that, but for a long time before even the two technical teams met, I asked the officials in Israel to start looking after this line, but they postponed it for a very long time in my opinion and it [PVR 16] should be dealt with even before not to keep a point hanging in the implementation of the Treaty. But that's what happened.

Mr. Lauterpacht: When you had your discussion with Mr. Sharon about Taba, and before the moment when you say that Mr. Sharon said "let us compromise", did Mr. Sharon assert that the boundary lay actually near the Dom palms?

H.E. Kamal Hasssan Ali: No, actually it was a real surprise for me when I went there, met with him in Ras el Naqb Airport, and then when we passed all over the line and the helicopter went down near El Dom trees, and when he showed me the space, the stoney place, where it is a remnant of a tent or a building, actually I was surprised because this was not at all my information, my own information, because I had so many colleagues who served in this area and we know very well where our borders are.

Mr. Lauterpacht: But you are saying that Mr. Sharon pointed to some ruined buildings or a dusty space and said that that was the end of the boundary?

H.E. Kamal Hassan Ali: Yes.

Mr. Lauterpacht: And that position was where, near the Dom palms?

H.E. Kamal Hassan Ali: Near, the Dom, yes.

Mr. Lauterpacht: Near the Dom palms.

H.E. Kamal Hassan Ali: Just nearby the Dom.

Mr. Lauterpacht: East or west of the palms? [PVR 17]

H.E. Kamal Hassan Ali: Well, it is just nearby that you can say north.

Mr. Lauterpacht: North.

H.E. Kamal Hassan Ali: Within metres.

Mr. Lauterpacht: Did Mr. Sharon ever suggest that the Dom palms and the Well and the Egyptian Police Post fell on the Israeli side of the line?

H.E. Kamal Hassan Ali: No, he just mentioned that the Dom trees and this place where the stones are, this is the boundary.

Mr. Lauterpacht: Thank you very much.

H.E. Kamal Hassan Ali: Thank you very much.

The President: Any more questions from your side?

Prof. Bowett: Your Excellency, you were asked by Mr. Lauterpacht whether you knew there was a dispute over title to the area -- title to the area. Now I want to ask you whether the dispute, to your knowledge, was one over title to the area or was it a dispute over the location of Boundary Pillars?

H.E. Kamal Hassan Ali: It was a dispute on the location of some points.

Prof. Bowett: Thank you. Only one more question. Do you know the location of the two positions for Boundary Pillar 91 now claimed by Israel? [PVR 18]

H.E. Kamal Hassan Ali: By that time I knew that it was on the hill 91.

Prof. Bowett: No, let me repeat my question. Do you know now what are the two positions claimed by Israel for Boundary Pillar 91?

H.E. Kamal Hassan Ali: No, I am not in the position.

Prof. Bowett: Well, let me just help you if I may. You have on this map behind you an identification of two positions: one is there, I now point to 91(I) (west), Bir Taba; and one is there, I now point to 91(I)(east), that is the foot of the Granite Knob. My question to you, Your Excellency, is: was the point shown to you by Minister Sharon either of those two points?

H.E. Kamal Hassan Ali: No, not at all. What was shown to me by Mr. Sharon was just here.

Prof. Bowett: The witness is pointing to the position just above the words "Palm Trees". So what you were shown was, if I may put it this way, a third position?

H.E. Kamal Hassan Ali: Yes.

Prof. Bowett: Not either one of those?

H.E. Kamal Hassan Ali: No, no, not at all.

Prof. Bowett: Thank you, that's all I have.

The President: Thank you so much.

ANNEX II - (A)

EXTRACTS FROM
THE OFFICIAL VERBATIM RECORD
OF
THE ARBITRAL TRIBUNAL'S
HEARING ON 18 MARCH 1988,
MORNING SESSION

THE ORAL PLEADING OF
AHMED S. EL-KOSHERI
DURING THE FIRST ROUND
WITH REGARD TO THE THIRTEEN FIRST
DISPUTED BOUNDARY PILLARS

(PAGES 294 - 324)

الملحق الثاني ـ الشق (أ)

مستخرج من

المضبطة الرسمية لوقائع جلسات هيئة التحكيم

اجتماع يوم ١٨ مارس ١٩٨٨ الجلسة الصباحية

مرافعة أحمد صادق القشيرى خلال المرحلة الاولى

فيما يتعلق بعلامات الحدود الثلاثة عشر الاولى

المتنازع عليها

(الصفحات ٢٩٤ ـ ٣٢٤)

Prof. El-Kosheiry: Eminent Members of the Tribunal, before proceeding with my explanation regarding the remaining thirteen pillars, I would like to be sure that you have received, or are receiving now, the additional material, that will be included to your folder. This includes, you will not disregard the table of contents that have been previously given to you, but you will add another page which starts with map 2A which was originally appearing in the Egyptian Counter-Memorial, this will bear number 26, and this additional material will end with the number 33, which is the 1935-1938 map with Palestinian grid that was in the Egyptian Map Atlas under the number 6-3. These new materials, together with some material that had been already existing in your folder from the previous days, will be referred to in my exposé today. [Tape No.69] I am not as good in cartology as Professor Bowett. That's why I would request the indulgence of the Tribunal to permit me to have the help and assistance of Colonel El-Shenawi who will be locating the locations that he will be pointing to on the maps that we will have. So I will rely for the indications on the maps, on my colleague Colonel Shenawi.

This having been said, I start by indicating, Mr. President, that my task today is to explain to the Honourable Tribunal the Egyptian point of view with regard to the 13 other disputed pillars as I have previously said. After my statement I will be calling upon three Yugoslav former UNEF officers to give testimony on certain particular aspects [PVR 10] related to their function as members of the UNEF forces and thereafter I shall call Dr. Dowmann to give testimony on one particular, specific issue.

Mr. President, I shall take up first the disputed pillars along the southern part of the boundary, that's the continuation of what we have been talking about yesterday. As you certainly remember, we were talking about 91, then 90 and 89 are not disputed, so we are talking about what is over that. 88 is a new boundary that has been agreed [to add]. It didn't exist before at that location, but the Joint Commission decided, both Parties accepted, to erect a new sort of boundary at 88. Certainly the final location of 88 will be determined in function of where the line will come. That means, it would depend on where 87 will be located. Here is 87(E), which is located at what we call Gebel Fort, and what had always been called Gebel Fort. For Israel to arrive to Gebel Fort they needed two steps, so they put one first which is 87(I), then at what they call now Gebel Fort they have 86(I). Then 85, they put it there where they claim now Gebel Fathi has moved in that direction. For [Egypt], 86 is located where you have on that map Gebel Fathi as indicated. Then 85, i.e. [Egypt's] 85 is where they say Gebel Fathi is. And then 84, you will not see it on the maps, because its [location] will be determined in function of how your Tribunal is going to decide with regard to [BP 85]. Thereafter, we arrive to BP 83, which is not disputed. After 83, we go upwards to BP 82 which is an astronomical point. So there is no difficulty about [82 and the following pillars]. This is the section that I call the "southern part" about which I'm going to first talk.

It is to this southern sector that most attention will be given. Then the remaining Boundary Pillars to the north will be considered briefly. There are several reasons for this order of presentation and for giving special emphasis on [PVR 11] the southern sector.

First, the Israeli pretention aimed at dislocating pillars in this southern part of the boundary, which effect in final analysis a large area of about 8 kilometres. You will see that this is the largest area that would be affected.

The second reason for taking up this southern sector of the boundary first relates to Israel's sudden change in position with regard to the boundary in 1982. During the technical work of the Joint Commission in 1981, Boundary Pillars 85, 86, and 87, as they were existing had been agreed initially. As you have previously heard from Admiral Mohsen Hamdy when he gave testimony yesterday, and to which Ambassador Elaraby alluded in his Opening Statement. It was precisely on 14 January 1982 that the Israeli side on the Joint Commission did a volte-face and reneged on this agreement. This is a point that we have already written much about in our Memorial, paragraph 2, point 21, and the following paragraphs, so I will not go into that point. In its Counter-Memorial at page 150, Israel attempts to dodge this fact by attributing the decision to what it describes as I quote "junior surveyors" of the Israeli team. But it was of course these surveyors who, with their Egyptian counterparts, actually inspected each Boundary Pillar site in dispute. That they were over-ruled later at a political level merely points up what Egypt has said. This is exactly what we are saying. There were agreements. We do recognize, and it should be emphasized, that as a matter of fact there had been no premeditated intention from Israel to claim anything with regard to this [sector]. That's why they didn't destroy [the existing pillars], and fortunately for the truth the pillars do exist today, because when they took the Egyptian side there, they had no intention to challenge these pillars. Accordingly, they showed it to [the Egyptian side]. And that is how it was so difficult later on, after having [PVR 12] [the pillars] photographed and reported, to come and destroy them, as it happened in other places. The now disputed Boundary Pillars 85, 86, and 87 were drawn into question in early 1982 only after agreement on BP 91 failed to be reached. The contest about [the pillars in question] came as a result of the failure to settle the BP 91 issue. Apparently, this volte-face was a tactic to attempt to withhold withdrawal from the largest possible portion of Egyptian territory. Such a conclusion is reinforced by Israel's purely arbitrary selection of locations between BP 83 and BP 89, as I shall bring out in a few minutes.

The third reason, Mr. President, for starting with this southern sector is that in the 1906 Agreement, the boundary south of BP 83 at Thamilet El Radadi is dealt with quite differently than the rest of the boundary to the north. The southern sector of the boundary is defined entirely in terms of geographic features of the area. These features hold the key to the course of the boundary; and it is the location of these geographical features which Israel has distorted in its written

pleadings in order to modify radically what is the true course of the boundary between BP 83 and BP 89.

This radical modification is shown on the map already on the easel. You have it on your folder too. The boundary line shown at all pre-1982 maps -- whether Egyptian, British, Palestinian, or Israeli -- showed the boundary to run along the line which Colonel Shenawi is identifying for you now. [Tape No. 70] This was the line you will find on all maps, pre-82 maps. Then, abruptly, and for the first time, those post-82 Israeli maps started to show an important westward shift of the line between BP 83 and 89. In order to understand fully, because Israel has advanced not only a shift from what existed under all maps pre-82, but they have also shifted [PVR 13] their positions. This is a map that is produced by Israel regarding Eilat, and you have it in your folder under No. 19, in your map folder, the Tribunal's map folder.

What we did here is a [superimposition on the original map]. Initially, this map is fixing the line according to the actual position of the Survey of Israel. The lines we have interposed on the other cover of that sheet, that chemise, shows what Israel is claiming in the actual arbitration. As you will find, the black line does not coincide with the red line. The red line is the line indicating what Israel now, according to the cards that were attached to the Compromis, is claiming from the Arbitral Tribunal. So you will see the ambivalent situation wherever, still today, the Survey of Israel is presenting something on their maps which does not correspond to what Israel is claiming from the present Arbitral Tribunal.

The radical shift in the line in the southern sector is also shown very clearly on the Israeli map issued, as I said, by the Survey of Israel in 1986. The map is here enlarged and you will certainly have the opportunity to see how the line on this map differs from the line that already is indicated according to the Israeli pleadings in the present Arbitration. As I said, and I would like to put it straight on the record, that these discrepancies reflect still another switch in Israel's position in this sector of the boundary. It is the boundary line superimposed on this map and the position of the pillars shown in red that are now reflected in the Israeli description cards in Appendix [A] to the Compromis.

How Israel has attempted to justify this post-1982 change in the boundary through the mislocation of geographic features will be discussed next. However, there is one fact regarding the disputed pillars in this sector that should be borne always in mind. The original Boundary Pillars, I mean by that, the complete

masonry pyramids with iron flanges in [PVR 14] good condition are still at the Egyptian locations for BP 84, BP 85, BP 86, and BP 87. This is an uncontested fact, and we have already submitted photographs of three of these original pillars which appear in the Egyptian Memorial. Mr. President, you and the Tribunal have had certainly the opportunity to observe this fact during your recent visit to the site, at least with regard to one of these locations.

Mr. President, eminent Members of the Tribunal, this would have been, from a legal point of view, exclusive evidence and I would have nothing more to say about the southern part of the boundary, by only emphasizing that we have there these living testimonies on the ground, and they talk for themselves. But since Israel is now trying to let us enter into a discussion about what happened in 1906 and the demarcation, was it right, or was it not right, in conformity with the 1906 text of the Agreement or not; so we are obliged unfortunately to go into the Israeli scenario that has been put in this respect.

The first portion of the scenario is to dislocate, or to indicate wrong places for the principal geographical features that affect the course of the boundary in the southern sector. In this respect there are mainly three dislocations that Israel is trying to invoke. First, with regard to Wadi Taba, the course of Wadi Taba and its northern part or northern tributaries or whatever they may be called in geographic terms. This is the first example of how in this region Israel has sought to distort geographical features in order to try to modify the course of the boundary. [To explain this issue reference is made to Map 2A, which the Tribunal was requested to look into several times before, as well as to the] illustration figures 2 and 3 in your folder, Document No. 27 in the Rejoinder. This aims to give an idea about Wadi Taba from the place where it starts bringing the water all way down to the Gulf of Aqaba. There is no question that the name Wadi Taba has [PVR 15] commonly been attached to the Wadi that lies between a point to the north-west of the undisputed BP 89 and the Gulf of Aqaba. This part I don't think raises any problem because it is undisputed. However, an examination of the map shows that north-west of BP 89 three Wadis come and flow into Wadi Taba from the north. On the east is Wadi Gasairiya, on the west is Wadi Haneikiya. In the middle is a Wadi which is smaller than the two, which to the knowledge of Egypt has never borne a name. The only maps on which the middle Wadi is given a name are those recently produced by Israel for these proceedings, and certainly you will understand why.

It was demonstrated in the Egyptian Rejoinder (starting in paragraphs 3.44 and the following paragraphs) that the main watercourse feeding into Wadi Taba from the north is the eastern part which is Wadi Gasairiya. In the map folder that you have there are three other illustrations placed on the left side. Why we produced that? We produced it to establish that according to certain traditions prevailing in the area, in neighbouring places, the same Wadi can have in a portion of it a name that would not necessarily be the same as the main course that would go in [constitute] the lower part of the Wadi. You see, here in Jordan, which is very close, and going to the Dead Sea, which Israel certainly knows very well, you have, what is called in its lower part Wadi Mujid and on the upper part, Wadi Yabis. In the Sinai, near Saint Catherine, we have Wadi el Sheikh, and its continuation is called Wadi Feiran. We have in Saudi Arabia, Wadi Rumma, and its continuation near Kuwait [is called] Wadi Batir.

If I will be permitted, Mr. President, [to give] a [different] illustration in this respect, let us go to our beloved city, Paris. We have the Grands Boulevards: starts with the Capucines, but at one turn it becomes Boulevard des Italiens. Later on it becomes Boulevard Poissonières, etc... But it is the same thing. Nobody would say that rue Richelieu or rue Drouant would be called Grand Boulevard. Le Grand [PVR 16] Boulevard is all through the Grands Boulevards.

Here as well, we have the main course going to the sea all along. Nobody would say this small tributary is [part of] the main Wadi, and I believe this was certainly understood by Wade and the others when they descended, from the point they were there, i.e. descending on the eastern side in Wadi Gasairiya, and from there continuing to the Wadi. What emerges from these figures, Mr. President, as we submit, is that if any of the three northern tributaries was also called Wadi Taba it would be considered the continuation of Wadi Taba, it is the main watercourse on the east, I mean Wadi Gasairiya. When Wade in his Report at page 65 reports that on 18 October the Commission descended into Wadi Taba and set up a beacon on the east cliff at a point from which the beacon on Gebel Fort is visible, he is clearly referring to the present undisputed BP 89, which is [accessible through] that way. This pillar lies on a cliff to the east of and overlooking Wadi Taba. Exactly where he descended into the Wadi is not clear, but if it was much to the north of the present BP 89 then it certainly was the Wadi Gasairiya into which the Commission first descended since they were descending to this area from the north.

Why then has Israel incorrectly given the name Wadi Taba to the small middle tributary which never before had been given any name at all? There are various reasons for that:

The first reason is that it would provide the opportunity to locate Gebel Fort on a peak over [2,000] metres to the north-west of the Egyptian location for Gebel Fort. Since the boundary runs through Gebel Fort according to the text of the 1906 Agreement, such a change in this geographical feature would cause a major shift westwards of the boundary line. Israel has identified Gebel Fort as BP 86(I) and has placed BP 87(I) east of and overlooking this small Wadi. But the real Gebel Fort as mentioned by name in the 1 October 1906 Agreement and identified by the Commissioners in their demarcation process immediately [PVR 17] thereafter -- which is the Egyptian location-- lies to the west of Wadi Gasairiya. The Israeli location of Gebel Fort, far to the north-west, and the corresponding needed shift in the boundary to the west, would place 87(I), as indicated by Colonel Shenawi, to the east of and overlooking the unnamed middle Wadi which Israel now calls Wadi Taba. It would place BP 86(I), as identified on so-called now Gebel Fort, east of the slightly north end of the Wadi.

This geographical distortion is misleading. The 1906 Agreement refers to the boundary line as extending from Ras Taba to the summit of the mountain called Gebel Fort on one stretch. This line is not two stretches, but [runs in] one stretch. This line was, according to the Agreement, the line in question to pass by the summits, or peaks --the particular translation of the term in this respect does not matter -- of the mountains east of and overlooking Wadi Taba. There is nothing in the Agreement which provides that the Boundary Pillar passing by Gebel Fort lies east of or overlooks Wadi Taba. Nothing in the text says that, which indeed [the line] does not. [The boundary] lies west of and overlooks Wadi Gasairiya, which is the only one of the three tributaries that could possibly also be considered the normal continuation of Wadi Taba. But by naming the middle Wadi as Wadi Taba and then placing Gebel Fort far to the north-west of the real location, and calling it now BP 86(I), Israel aims to show BP 87(I) as lying east of and overlooking what it wrongly calls Wadi Taba.

Mr. President, Egypt maintains that both this misnaming of the middle Wadi and the shift in the location of Gebel Fort far to the north-west of its correct location are transparently wrong.

It is of prime importance to note that an original masonry pillar, and with flange, bearing engraved

numbers, in good condition, still stands at the Egyptian location for Gebel Fort. This is BP 87(E). No such pillar or even [PVR 18] remnants of such a pillar are to be found at Israel's location of this feature at what it calls now BP 86(I).

In this regard we are going to introduce as witnesses former Yugoslav UNEF Officers stationed on the Egyptian side of the border during the period 1957-67 to evidence precisely where they were stationed and where the boundaries were located in that section of the International Frontier.

It is also stressed that the next pillar south of Gebel Fort was, according to Wade, placed on a cliff to the east of and overlooking Wadi Taba -- this is now the undisputed BP 89. [Tape No. 71] It was and is intervisible with Gebel Fort. So there was no reason to mention any geographical features between Gebel Fort and the next southern pillar, which is, as I just said, BP 89, in order to "clarify the course of the boundary", as Israel wrongly maintains was necessary in paragraph 8.94 of its Rejoinder. No need for [an additional pillar] because the intervisibility was already there. Why would they need another station or another pillar in between? That's how the situation was and still remains. Moreover, on the basis of Wade's Report, there was no need for interposing a Boundary Pillar between Gebel Fort and BP 89 as Israel now seeks to do, because they cannot go to what they claim now as being Gebel Fort on one step, so they need two pillars, not one pillar. In the initial Agreement, it is stated one pillar [only].

Arguendo, supposing that Israel was right in saying, in the same paragraph of its Rejoinder, that Article 1 of the 1906 Agreement "clearly implies that Wadi Taba and the eastern ridge continue most of the way to Gebel Fort". That is [Israel's] implicit understanding of Article 1. An implication which certainly Egypt does not find in Article 1. [PVR 19] We don't find anything, neither explicit or implicit in this respect. Then, according to the Israeli thesis, the continuation of Wadi Taba would be what is more commonly known as Wadi Gasairiya which extends well beyond Gebel Fort as identified by Egypt. [This Wadi] goes a long, long, way up. But as I have already said, Gebel Fort and what is now agreed BP 89 were intervisible. So the features lying between them needed no identification in order to know the course of the boundary line and there is absolutely no indication that in the 1906 demarcation any Boundary Pillar was placed between them; indeed, the contrary must be assumed, since Wade (who is a careful surveyor) makes no mention of any beacon between BP 87 and what is now

agreed BP 89, i.e. between Gebel Fort and the following Boundary Pillar to the south.

I should add here that at the time of the demarcation in 1906 there was no discussion of locating a pillar at the now disputed location of BP 88. You remember that when Sir Ian Sinclair has sufficiently clarified how the Parties agreed to install for the first time, and to erect a new pillar, that means a pillar at a location where there had been no Boundary Pillar before, that's Pillar 88. So the Joint Commission decided, in 1981, to place a new pillar at this location but its exact position would depend on how the other locations to the north would be determined. So, before the new pillar had been agreed upon to be established in 1982, there was no pillar called 88 at all. That is why it had so many consequences on renumbering the following pillars.

In conclusion, on this first point, Mr. President, I will say that this distortion of geography regarding the extent and course of Wadi Taba has no basis either in history or geography, and was deliberately done in order to find a basis for switching the boundary line far to the west in this sector. [PVR 20]

The second point, and the most crucial point, in my opinion, is the location of Gebel Fathi Pasha. Where is this Fathi Pasha? Is it as it was always [located] or has it suddenly moved two kilometres and a half to the north-west direction? The Egyptian location of this feature, known as Gebel Fathi Pasha, and sometimes as Gebel Ibrahim Fathi Pasha, which is the full name of the Egyptian Senior Commissioner who signed the 1906 Agreement -- it was very fashionable at that time to give the name of one of the Commissioners on the Egyptian side, that is Fathi Pasha, and one name to the Turkish side, that is Rushdi Pasha, who was on the other side, so the name will remain for eternity. From that day on, they named it that, it was not Gebel Fathi Pasha before, they baptized it, Gebel Fathi Pasha at that time in 1906. It was, and it remains, just to the west of BP 86(E), that means on the Egyptian location on the map. On Israel's maps, prepared for these proceedings, in particular, this feature is located about 2,400 metres to the west of this location.

In discussing this feature, I shall address the question why the correct location of Gebel Fathi Pasha is important to the locations of pillars in this sector of the boundary. And I shall set forth the evidence that supports the Egyptian location and refutes the location now given by Israel.

I will be emphasizing, at the very beginning, that the second paragraph of Article 1 of the 1906 Agreement, mentions twice Gebel Fathi Pasha, not only once, but twice. Purposely. The first time was in indicating the course of the line northward from Gebel Fort. This portion of the Article prescribed that the line run: "From Gebel Fort to a point not exceeding 200 metres to the east of the summit of Gebel Fathi Pasha." That [envisages the case] when you are coming from the south. How to locate Gebel Fathi Pasha, and how the boundary should be located 200 metres to the east, or within 200 metres to be more precise, i.e. not exceeding 200 metres to the [PVR 21] east of the summit of Gebel Fathi Pasha.

Then there is another sort of identification of Gebel Fathi Pasha. The second time was with regard to the determination of the location of the following points [to the north], which are described according to the corrected English version of the text to be:

> "...formed" (that's the following location) "formed by the intersection of a prolongation of this line with a perpendicular line drawn from a point two hundred metres measured from the summit of Gebel Fathi Pasha along the line drawn from the centre of the summit of the hill to Mofrak Point" (and the Article explains "the Mofrak is the junction of the Gaza-Aqaba roads").

So it is not only identified from the south, it is also identified from the north.

Thereafter, Article 1 designates the locations of BP 83, that's to the east of Thamilet el Radadi, leaving the wells to the west of the line, and BP 82 which is Ras el Radadi, which was Astronomical Point A.3 and is undisputed between the Parties. The last two pillars 83 and 82 are undisputed, that is why I will not talk about them.

I need not take the Tribunal in detail through the sketch that Wade made with a description of how he located what are now Boundary Pillars 85 and 86 with reference to Gebel Fathi Pasha in accordance with Article 1. We will see this, that Wade had no difficulty locating BP 82 and 83, since they were specifically set in that paragraph of Article 1. However, locating BP [85] and 86 involved the field alignment which he illustrated and described at pages 55 and 56 of his Report. Wade did not indicate that his sketch -- which you will see on the second side of document 28 at your Folder. The first page is his formula, and the sketch in question is at the beginning of page 56. Clearly this sketch was not to scale and not correctly oriented -- he didn't say if it would be

north or east and how it would be located.used on the ground. An illustrative diagram on a scale of 1:25,000 is included as No.29 in Map Folder just to explain that sketch in practice. [Wade wanted simply to provide] [PVR 22] a sketch that would be used to identify Gebel Fathi on the ground. It was purely illustrative. However, (as demonstrated on Document No.29) [the sketch] can be correctly oriented to show the relative positions of Gebel Fort -- that is F in his sketch; F in Wade's sketch would be at the location bearing that letter. Gebel Fathi would be according to the sketch at the location referred to as (I). According to the formula, and how we constructed it (in document 29) will be [the subject of] the testimony that will be given by Dr. Dowmann. [For the time being it has to be recalled that, according to Egypt,] Gebel Fathi is not at 200 metres to the west, but precisely at 98 metres. It is within the 200, the 200 was a maximum but not a minimum, and accordingly when they fixed the boundary, the boundary passed precisely 98 metres to the east of Gebel Fathi. It can be seen that Wade's calculation confirms the Egyptian locations of these geographical features and Boundary Pillars as shown on this map, which Colonel Shenawi is now demonstrating (Map No. 26 in the Map Folder).

From this, the importance of Gebel Fathi can be seen. It provides the basis for locating BPs 85 and 86. It has a dual importance, because it also fixes what would be the exact location of Gebel Fort. On the contrary, we will see that the Israeli locations for these features and pillars do not accord at all with Wade's sketch. This will be demonstrated by Dr. Dowmann in his testimony. In fact, they totally ignore the instructions of Article 1 regarding the location of the two pillars in the Ras el Naqb area based on where Gebel Fathi is. We are going to represent now another map which is Map 2A, that you will find in your Folder, Mr. President, as No. 30. [This map] has been already established in its initial form after page 87 of the Egyptian Rejoinder and what is now in front of you is an enlargement of the northern sector, the sector that we are talking about of Wadi Taba. [PVR 23]

The Israeli location for Gebel Fathi; I will be trying to see how either of the two locations would fit the descriptions and all the indications about the demarcation of the lines that took place in 1906-1907. The Israeli location for Gebel Fathi is portrayed on the map as shown here (No. 1 in the Map Folder). This places Gebel Fathi about 2,400 metres to the south-west of the Egyptian location. The other feature that should be used as a point of reference is the location known as Mafrak, since Mafrak plays an important role

because it has been mentioned in Article 1 of the 1906 Agreement.

What we have to notice is that the Egyptian location is confirmed with various sources of evidence. What are these evidences? First, Owen's Report, which has been annexed as Annex 23 to the Egyptian Memorial. Owen's Report placed Gebel Fathi Pasha -- he called it Gebel Ibrahim, as I said the full name is Gebel Ibrahim Pasha Fathi - at 1,000 yards from the head of Naqb El Aqaba. We identified, precisely, it is 975 metres, which is the equivalent, according to my calculation, of 1,000 yards from the head of Naqb el Aqaba. It shows where the head of Naqb el Aqaba lies. I don't think that this is a feature that Israel has challenged, but maybe there is also disagreement about the location of Mafrak and Naqb el Aqaba. I say maybe, because till now it seems that Israel didn't challenge these locations. In this respect also, Owen's Report fully confirms the Egyptian location. We produced in our Rejoinder at paragraphs 3.38 and 3.39, many extracts from his Report referring this in particular. [Tape No. 72] I would not bother the Tribunal of giving citation of them, but they are [in the Rejoinder], and the Tribunal can check on its own. Israel places Gebel Fathi Pasha not at [PVR 24] 1,000 yards but at 2,500 metres from the point El Mafrak and Naqb el Aqaba.

Mr. President, permit me to seize this opportunity in order to correct a material mistake that appeared in our Rejoinder. In the original figure following p. 87 of the Egyptian Rejoinder the distance between Mafrak and Gebel Fathi Pasha was reported to be 1,975 metres. The one thousand should be deleted. The right figure is the one quoted in your folders. It is 975 metres. From Mafrak to Gebel Fathi 975 metres.

Another source of evidence, and you will see, Mr. President, is Map No. 30 in the Folder which places Gebel Fathi Pasha less than 200 metres to the west of the boundary line as shown on that map. If the Tribunal would take the magnifying glasses and try to see what is after [the boundary line], you will find a peak, and another peak. In fact, Mr. President, there are three peaks in that area. The peak that we are talking about, to which [86(E)] is less than 200 metres to the east, is the second peak, and that is what the Commissioners in their demarcation in 1906 have established to be Gebel Fathi Pasha. But Israel is not happy with that. What they contend is that the third peak, the one furthest to the north-west is Gebel Fathi Pasha according to Wade. That is what they say. If so, it would be some 500 metres from the boundary line. But this cannot logically be the third peak because they are talking about less than 200 metres, that is

the Article 1 of the 1906 Agreement. [The third peak] would be 500 metres far from the boundary line, which exceeds by far, as I said, the 200 metre limit fixed in Article 1 of the 1906 Agreement, and on the basis of which all the demarcation operations had been conducted. Hence the Israeli location for Gebel Fathi Pasha in its Counter-Memorial -- I mean the third rather than the second peak -- could not possibly be true, for it would lie 500 metres from the boundary line.

The entire premise for the Israeli contention that Egypt has incorrectly identified Gebel Fathi Pasha-- [PVR 25] incidentally, it was not Egypt, but the Demarcation Commission of 1906, if they "incorrectly identified" it, it was them, not Egypt, is based the Israeli contention on Wade's Map attached to his Report. The map in question is a very small map, the scale of which is 1:500,000. You already have this map, Mr. President; that is No. 14 in your Folder.

If you will permit me to request from you, and the eminent Members of the Tribunal, to take their magnifying glasses, and to go with me from the bottom leaving Taba, and moving north, you will see Gebel Rushdi Pasha, and over Gebel Rushdi Pasha is Gebel Fathi Pasha. The main Israeli argument as I see it is that Gebel Fathi Pasha is written on the map in a place quite to the west of the frontier. They say "Well, this is the determining point. You see, that's far to the west." If the place where you put a name on a very small-size, small-scale map, would have any relevance, this is something to be seen. Evidently, if such a proposition would be sustained by Israel to its advantage with Gebel Fathi Pasha, the same can work the other way around because it puts precisely Gebel Rushdi Pasha to the west of the frontier. So if we follow that argument, the result would be for us to move to the west Gebel Rushdi, which would come accordingly under Egyptian sovereignty, following the same logic, or illogic. Equally, if Israel considers Gebel Fort not to be precisely on its initial location, and should also be moved to the west, so the end result would be to move everything to the west, including Rushdi Pasha.

Well, I think that by merely trying to say that the place where the words for this feature appear on Wade's small map has certain relevance, [Israel is advancing an argument] entirely contrary to the logic. Such reliance cannot be reasonable, since the placing of a name on a small-scale map, either to the right or to the left, above or below a given location can have no significance. In this respect, as I said before, it would have [PVR 26] been more appropriate for Israel not to neglect the other relevant sources. If they want to give any relevance to the place where the name

appears on Wade's small map, they should be at least supported by reference to other sources, like the official Turkish map, having a scale of 1:100,000 which is certainly five times as large as that one. The Turkish map is that one which had been annexed to the 1906 Agreement, and you have it, Mr. President, in your Map Folder under No. 21. If you will kindly look in it, and honourable Members of the Tribunal, you will find precisely that this official authoritative map would not at all lead to any doubt that the line passes between the first and the second peak as precisely [indicated by] Egypt, and as had always been the case. It is not to the west of the third peak as Israel is now claiming.

Israel's mislocation of Gebel Fathi Pasha on the basis of a false interpretation of Wade's map is refuted by regarding where he placed certain other features as I said before. Here also Gebel Rushdi can be said to be in a wrong place, as well as Gebel Fort.

Summing up, it is clearly nonsensical to attempt on a map of a scale of 1:500,000 to locate features by reference to where place names have been put as a matter of convenience. Furthermore, it would have been expected that the most Israel might claim as to the location of Gebel Fathi Pasha would be the third peak to the north-west of Egypt's location on the basis of Wade's map. In fact, if they say that [Gebel Fathi] is the third peak, then the line would go between the second and the third peak. This is not what Israel is claiming in our case. Israel left the third peak, and went another two kilometres to the west to locate Gebel Fathi. This is a totally different thing than what Wade's Map would permit. Wade never said that it is envisaged two kilometres to the west of the third peak. This, I cannot find in any place. It is surprising. So Israel's location of Gebel Fathi, 2,500 metres to the west bears no [PVR 27] relation to Wade's map or any other map except those produced by Israel in connection with the present proceedings. It is evident that such a location is purely arbitrary. If you would like me, Mr. President, to have now [a break].

The President: I think it is the right time for the coffee break, yes. But then I would like to have a short meeting with the two Agents and the Registrar in this little room concerning this affidavits question. Thank you.

(coffee break)

The President: Who would like to continue now?

Prof. El-Kosheiry: Mr. President, eminent Members of the Tribunal, before leaving Gebel Fathi, I would like

to attract the attention of the Tribunal to two major elements of evidence which support the Egyptian location of Gebel Fathi. These are the Rushdi map, which is submitted by Israel, and relied upon by Israel, and the original Turkish map annexed to the 1906 Agreement which has been obtained due to the gracious co-operation of the Turkish Government.

You will find them both already in your Folder, Mr. President, under Nos. 15 and 21. Let us start with No. 15, the Rushdi map. If you will permit me to go through this map with you for just a moment, with your magnifying glasses if possible, Mr. President, we will see down on certain elevations near the sea the word "Ras Taba". Incidentally, this may be of significance for the discussions we had yesterday. Here is the word Ras, in Arabic, and the continuation Taba. Then we go up, to find what is called the dividing line, in Arabic, to a point referred to as Gebel Fort in Arabic letters. You find, indeed, an indication in Arabic and a point, the first point on the boundary, which is Gebel Fort. So we continue [towards the north] we find the word sort of crossing the line which Gebel Rushdi Pasha, which I said [PVR 28] we do recognize is to the east of line, and not to the west of the line. Nevertheless, it was written continuing to the west, but this is, as I said, an irrelevant factor, we go up, you will find the second peak among three peaks and the name of Gebel Fathi Pasha is written starting from there. This, according to Rushdi, what he identified as Gebel Fathi Pasha, who was his counterpart. I don't think that he can miss either his own Gebel, Gebel Rushdi, where it is placed, or the Gebel of his counterpart, which is Gebel Fathi Pasha. And we find it here. Certainly not at the third peak, and more evidently not two kilometres to the west of that as Israel now is claiming.

So this is the first piece of evidence that I wanted you, Mr. President, and eminent Members of the Tribunal to go through it. Turning now to the second, which is the Turkish.........

The President: Excuse me just a moment. When you are referring to the second peak, you mean the middle?

Prof. El-Kosheiry: The second peak, that's the middle, yes.

In your Folder, the document number 21 is the section 18 of the map annexed to the authentic Turkish text of the 1906 Agreement in Annex 5 to the Egyptian Counter-Memorial. If we go the same way from down, upwards, we will find in Arabic, Gebel Fort, on the line of the boundary [as clearly indicated on the map]. Same in the identification of Gebel Rushdi Pasha, the

name of which is written to the west in a manner crossing the boundary line. Unfortunately this is in Arabic but this can be checked by the Tribunal very easily, that this is Gebel Rushdi Pasha, and immediately thereafter we find Gebel Fathi Pasha. Evidently this cannot be the other elevation which is two kilometres and a half to the west where Israel now is claiming Gebel Fathi Pasha to be. [PVR 29]

So, I think, Mr. President, that the boundary line as shown on that Rushdi map, if we compare it to the line now proposed by Israel, it is evident that the Rushdi boundary line is markedly different from the Israeli line. [Rushdi] also clearly indicates where Gebel Fathi Pasha is and where Gebel Fort lies. [His map] confirms fully the Egyptian locations for these features and hence of BPs 87, 86, and 85. As the Tribunal has also seen on the second map, which is the Turkish official map annexed to the 1906 Agreement, the location is inescapable on that map too which confirms the Egyptian location of Gebel Fathi Pasha as well as with regard to Gebel Fort. Needless to emphasize, Mr. President, that the indications appearing on this official map, the Turkish map, annexed to the 1 October 1906 Agreement, constitute a conclusive evidence of the same value as the text of the Agreement itself. It is an integral part of the Agreement; it has the same value as the text. So both concur on the [geographic] locations, and this had been identified by the demarcation team who implemented that Agreement in conformity with the map annexed to that Agreement. [Tape No. 73]

Another element of evidence, Mr. President, that we would like to attract your attention [to] for a second. This you will find under number 30 in your Folder. This was the document that my colleague Colonel El-Shenawi was pointing to a few minutes ago and I will, with your permission, call him once again to come and help me in this respect.

On this map you will see, Mr. President, Members of the Tribunal, a sort of, at the north there of the map, the high triangular, flat plateau or playa. This is shown on all maps. It is here also on this map, bearing the name Qua el Naqb. [PVR 30] Starting from Ras el Naqb we see in a northwest direction that flat plateau called Qua el Naqb which is a sort of depression. You will note that the elevations throughout that area are either 742 or 743 metres. The position of Gebel Fathi Pasha has appeared on all maps invariably as lying approximately 2.5 km to the south-east of the centre of this triangular area. On any map which we may take, we will find Gebel Fathi located 2.5 km to the south-east. In contrast, the Israeli position of Gebel Fathi is about 2 kilometres and 100

metres to the south-west of the triangular area. There is no pre-1982 map evidence to support the relative position proposed by Israel for Gebel Fathi in relation to this triangular area.

Mr. President, when the Commissioners in 1906 wanted to delimit that administrative line between the Egyptian Sinai and the Vilayet on the other part of the frontiers they wanted and they have chosen Gebel Fathi as the point commanding and controlling Ras el Naqb. Incidentally, Gebel Fathi is 750 metres high and Ras el Naqb is [725] metres. So they waited, and there was a logic and a philosophy [behind their decision]. This is the hilly part, comprising the continuation of hills, that they were identifying and trying to make something that would be a landmark from which El Mafrak and Ras el Naqb could be seen. Moreoever, there is a geographic harmony between [the various parts of] this area. On the contrary, what Israel is proposing is on the plateau, something very far from where the Commissioners were contemplating their frontiers to take place.

Saying so, Mr. President, I would now turn to look very briefly to the location of Gebel Fort. In fact, having correctly placed Gebel Fathi Pasha on the map the location of Gebel Fort becomes self-evident. The sketch which gives a correct orientation of the Wade sketch -- you have it in the Folder, under number 29, I will not return to it, it has already been discussed -- shows Gebel Fort to lie along an almost straight line running through Boundary Pillars 85 and 86 as shown by Egypt. This line runs south-east [PVR 31] and Gebel Fort is almost 2 kilometres south-east of Gebel Fathi Pasha, precisely 1,875 metres from there. Israel on the other hand mislocates Gebel Fort by placing it some 2,000 metres to the north-west of where Gebel Fathi truly is, some 1,800 to the south-west of Gebel Fathi Pasha and where they allege that their boundary should pass. Such location is completely inconsistent with the location of Gebel Fort on the map, on all maps. The Egyptian location is confirmed by the official Turkish Map of 1906, attached to the 1 October Agreement which is the Map under number 21 in your Folder. It will be noted that Gebel Fort is located at 1,825 metres south-east of Gebel Fathi Pasha. Also, if the Tribunal would look to the Rushdi Map, which we were looking in a few minutes ago before the break, and with the Turkish Map, you will see that they both confirm and converge to make clear that Gebel Fort appears in the same location and at roughly the same distance from Gebel Fathi Pasha as portrayed in the 1906 Egyptian Map. No confirmation can be found in the Israeli location for Gebel Fort on any map until the new Israeli maps started to appear in 1982.

Mr. President, let me once again emphasize a determining factor, a conclusive element of evidence supporting the Egyptian location, i.e. that the original masonry Boundary Pillar with flange, bearing engraved numbers, and in good condition, stands at BP 87(E), which is Gebel Fort. There is no such evidence to support the Israeli location at BP 86(I) which they pretend is Gebel Fort. This, I think, is a conclusive evidence and I will not go any more except with a certain remark to be made regarding a map that Israel has had the kindness to provide us with in its Rejoinder as Annex [114A]. This is the part of the Palestinian map having scale 1:250,000, sheet 3, which appeared at a previous stage of the pleadings and you already have it in your file, Mr. President, under No. 31 in your folder. [PVR 32] This has been submitted by Israel. You remember, Mr. President, and Members of the Tribunal, that this map was submitted by Israel in order to substantiate or at least to try to help them with regard to the Taba point, i.e. BP 91 as already referred to by my colleague, Professor Bowett, yesterday. But it was, nevertheless, introduced by Israel and Israel strongly asserts that this map should be accorded no less weight than any other British or mandatory map. So let us do that. It is interesting to see what this map reveals concerning the course of the boundary line north of BP 91 up to Thamilet el Radadi, which is 83. You will find, Mr. President, the same line, according to [Israel's] own submission, or the map that they are submitting themselves, the same line going exactly the same, like on the 1906 maps, or Turkish Map or Rushdi Map, or the official Turkish Map. The same line you will find it here. Gebel Fort is here. Gebel Fathi Pasha is here. Not, as Israel says, 2.5 kilometres to the west of [the Egyptian location]. By their own submission they are recognizing the true Gebel Fathi, this is the true Gebel Fort.

So, Mr. President, this allegedly important new piece of evidence introduced by Israel, flawed as it is with regard to the topographic features at Taba, completely refutes Israel's position as to the course of the boundary line above BP 91, between BP 90 and BP 83, as well as to the location of the Boundary Pillars along the line, particularly the location of Gebel Fort, which is BP 87(E).

If you would permit me, Mr. President, to conclude with regard to this southern part of the disputed pillars, and before turning to the rest of the pillars to the north, I should like to suggest certain conclusions to be drawn from [PVR 33] this discussion of the southern sector of the line above BP 91 at Ras Taba.

First conclusion: Israel has incorrectly named a southern tributary as Wadi Taba in an attempt to support its westward shifting of the boundary line between BP 89 and BP 83. Geographically and historically, this misnaming of the Wadi has no support at all. Not the slightest element of evidence has been given in this respect to demonstrate that all maps from

1906 to 1982 were wrong, including the official map forming an integral part of the 1906 Agreement.

Second conclusion: although conceding that the 1906 Agreement cannot be read as locating Gebel Fort to lie east of and overlooking Wadi Taba -- this is in paragraph 8.95, at page 195 of Israel's last submission -- in the same breath Israel claims that to make sense of Article 1 Gebel Fort must be a location "situated north of the end of the east ridge". Having misnamed the middle wadi as Wadi Taba, Israel has then arbitrarily selected a location that meets this condition of their creation, and has interposed between Gebel Fort, which it numbers 86(I), and Pillar 89, a pillar which it calls BP 87(I). This pillar has no basis in the Article 1 of the Agreement or in the Wade Report. It's mere creation. It has no basis in the 1906 Agreement itself, and Wade never mentioned that there is, or can be any need for any pillar between the two. There is nothing in Article 1 to support the statement that Gebel Fort must be a location north of the end of the eastern ridge of this middle tributary. Wade's report at page 65, makes it perfectly clear that no pillar was placed between Gebel Fort and the next beacon placed on the east cliff of the Wadi Taba from which Gebel Fort could be seen. This point is now BP 89. Sir Ian Sinclair has already discussed the proper numbering of the pillars according to Owen's General Report and it is clear that the pillar at Gebel Fort which Owen numbered 86, is now BP 87 since BP 83<u>bis</u> on his list became [PVR 34] 84. In the last analysis, the Israeli argument is necessarily based on the misnaming of the middle wadi as Wadi Taba and, thus, prolonging the east ridge up to the Israeli's location of Gebel Fort.

Third conclusion: indeed, the correct place of Gebel Fort was perfectly clear in the minds of the Commissioners who negotiated and concluded and duly implemented the 1 October 1906 Agreement. Not only were the empowered Commissioners able to indicate the physical features agreed upon during the first stage of their delimitation mission, giving them new names even -- Rushdi Pasha, Fathi Pasha -- but they proceeded equally with its subsequent implementation on the ground during the demarcation phase of their official mission. Hence it would be absurd to claim the existence of any possible error committed by them.

Fourth conclusion: the original Boundary Pillars erected by the Boundary Commission in 1906-1907 are existing till today in good condition at the Egyptian locations for BP 84, 85, 86, and 87, the latter being Gebel Fort. As I alluded to before, Israel did not have the opportunity to destroy them in 1982 or thereafter since they were already inspected by the Egyptian members of the Joint Committee in late 1981, i.e. prior to the volte-face of 14 January 1982. I concede they didn't have any intention to challenge them. That's why they remained untouched, contrary to what happened in other places.

Fifth conclusion: the Israeli locations for Gebel Fathi Pasha and Gebel Fort have no support of any kind and are refuted by all the map evidence. They emerge out of an ex post facto imaginative wishful thinking totally alien to the reality of how the geographical physical features were conceived by the Boundary Commission in 1906 when the Commissioners identified the locations to draw their map and to establish the Boundary Pillars. [PVR 35] [Tape No. 74]

Sixth and last conclusion: the important westward shift in the boundary line in this southern sector based on the Israeli locations for the BPs between 83 and 89 is not only contraverted by all the map evidence, but has been invented after the volte-face of 14 January 1982 to give a certain support for the political decision aiming to withhold withdrawal from that important part of the Egyptian/Sinai until the settlement of the Hotel issue at the Taba Beach. Clearly it doesn't need a genius to arrive at that conclusion.

Saying so, Mr. President, eminent Members of the Tribunal, I would now turn to the disputed Boundary Pillars north of BP 83. I want to comfort you by saying that the remaining disputed pillars will be taken in a way that will be very brief. The discussion will be kept short and will be largely devoted to responding to the additional comments contained in the Israeli Rejoinder. I will not repeat anything that has been said before in the previous two hours of exchanges of pleadings. However, certain general points regarding the remainder of the disputed Boundary Pillars should be made.

First, in many cases the Israeli location is based in whole or in part on the presence of UN markers at the site, such as barrels and pipes. Extensive evidence has been cited in the Egyptian Memorial (particularly at paragraph 5.115 and following paragraphs), that the purpose of such markers on the Egyptian side of the border was to facilitate UNEF's own operations but were expressly disclaimed as

frontier markers. This matter has been further dealt with during these hearings by my colleague, Sir Ian Sinclair.

Second general observation, the presence of original Boundary Pillars or their remnants at the Egyptian locations constitutes conclusive evidence as to the original location [PVR 36] of Boundary Pillars during the demarcation in 1906. I need not repeat what Sir Ian Sinclair and Professor Bowett have already said in rebutting Israel's contention that the replacement of the telegraph poles by the permanent masonry pillars was not part of the demarcation process. Such a conclusion flies in the face of evidence, since it is entirely to the contrary to the relevant official documents pertaining to the work of the 1906 Boundary Commission.

It may also be observed that the Israeli position is not consistent. For Israel cites evidence of original Boundary Pillar remnants -- evidence which Egypt considers dubious at best -- to support the Israeli location of certain of the northern pillars in dispute. In the circumstances, Israel can hardly contest the importance -- in locating Gebel Fort, by example at BP 87 -- of the fact that where the Egyptian location stands today there is an original masonry pillar with the flange intact and in good condition, and not just a pile of rock pebbles of unknown origin. When there is a pillar existing they say "no, this is not the frontier". When there are some pebbles that are unidentifiable they say "oh, yes these are remnants and these should be given consideration". Disproportion and inconsistent attitude. Such inconsistency cannot be allowed in front of an International Court and should be considered procedurally inadmissible.

Third general observation, the Commissioners' objective in 1906 of having as straight a boundary line as possible has an important bearing on most of the disputed northern pillar locations. Let us remember, Mr. President, that in the southern part there are hills so there are features than can be identified; [but the northern part] is a desert -- more or less flat -- that's why intervisibility was necessary and a straight boundary line was important. As Wade said in his Report, at page 54: [PVR 37]

> "The objective before us in demarcation was in most cases to march in a straight line from a station of known geographical position to another likewise known."

Therefore, Article 1 of the 1906 Agreement had no need to rely on geographical features with regard to the northern part of the boundary line, contrary to what was deemed necessary in the southern part as previously explained. In large part, the boundary followed a straight line connecting astronomical stations established earlier by Wade and this was the reason for the objective stated in Article 3 of the 1906 Agreement of achieving intervisibility, which becomes important regarding these points north of BP 83. For only by such means, and using the instruments necessary for intervisibility, could a straight line be achieved. A glance at the map will show the relative straightness of the line overall and particularly in the part north of the high mountains in the Ras el Radadi area. North of Ras El Radadi this had been clearly the case. This can be seen from the first map appearing in Egypt's Map Atlas. Only a few deviations from relatively straight lines may be detected in the official 1906 map attached to the 1 October 1906 Agreement which has been previously referred to several times. Owen in his General Report, when he described the boundary markers, at page 43 of his Report, makes a number of references to pillars lying along the straight lines connecting astronomical stations. Although there were certain areas on the line north of BP 83 where marked deviations from a straight line occurred, due to the topography and to the reality on the ground. The factor of straight lines was an important element in the determination of the boundary. By way of illustration, we take the 1935-1938 map of the northern part, which is No. 5 in the [Egyptian] Map Atlas. [PVR 38] If you will try to see the map I am talking about which is a copy of the northern sheet of the 1935-38 Egyptian map, scale 1:100,000 in Egyptian Map Atlas No. 5-1. This map shows the first 21 Boundary Pillars. With the exception of a small deviation at Rafah, just at the beginning, the line is a straight line running north-west to south-east. If we take an instrument and put it, it will be a straight line. Any deviations from perfect straightness were slight and justified by the existence of certain particular difficulties which the Boundary Commission encountered. All these have been noted in connection with the discussion of certain of the disputed pillars in the Egyptian written pleadings. So I am not returning to it. But I have to emphasize here one fact: it is hard to find on any map, frontier map, a line more straight than this one and Israel itself recognized the importance of the straightness of the line when giving up certain disputed Boundary Pillars. At the beginning, you may recall, Mr. President, Members of the Tribunal, that -- as evidenced by the MFO maps attached or enclosed in the Israeli Counter-Memorial -- you will see that initially there were 17

disputed Boundary Pillars. [With regard to] three of them, Israel gave up their claims because they recognized that what they were claiming was a deviation from the straight line. They recognized that they have no justification for that. That's why they dropped all charges against Boundary Pillar 6, Boundary Pillar 67A, and Boundary Pillar 68A. This can be checked on the MFO maps identifying the position of the two Parties, which are after page 153 of the Israeli Counter-Memorial. So, if they accepted the concept of the straight line with regard to three pillars, let them be consistent and continue the same straight line with regard to the other points.

The fourth, and last, general remark that I would like to say in this respect would be the following. In many cases [PVR 39] the map evidence is significant, although at times the differences in the locations of the Parties are so small as to be detectable on maps even on a scale of 1:100,000. That's why we prepared for you, Mr. President and eminent Members of the Arbitral Tribunal, the paper appearing at Document 32. If you will apply it on the map I was talking about, this exercise can be done, you will find how small is the deviation especially with regard to Boundary Pillars around from 6(E) to 7(E) to 8(E). This was done exactly on a straight line and this is the only way you will find that there is a deviation from a straight line. The Egyptian position lies exactly on the straight line, the Israeli position is the one deviating from that line. That is why I would submit that where the deviation is sufficiently important to be seen on such a map, the map evidence supports the Egyptian point of view and not the Israeli location.

With these introductory comments, I shall now highlight the differences between the Parties at each of these locations, very briefly.

With regard to Boundary Pillar 7, we amply covered this in our Egyptian Memorial at paragraphs 6.38 up till 6.42; in Egyptian Counter-Memorial from point 6.56 to point 6.57; in our Egyptian Rejoinder in points 7.4 and point 7.5. The issues involved here with regard to Pillar Number 7 concern the presence of UN markers at the Israeli site and the element of the straightness of the line, that I just alluded to.

As to the UN markers, the Israeli Rejoinder contends in paragraphs 8.77 up to 8.78, at page 189, that there is strong evidence of the course of the boundary. This contention has already been dealt with by Sir Ian Sinclair with regard to the significance or non-significance of the UN markers in this respect. [PVR 40] We simply would like to add in this respect that Israel has no consistent attitude with regard to

the United Nations markers. Contrary to its position with regard to BP 7 and other disputed pillars at the Rafah area, Israel accepted, during the work of the 1981-82 Joint Committee, to totally disregard the same UN markers existing at BPs 58, 59, 60, 61, 62, 64, and 66. At all these locations, there were UN markers west of the points where the new pillars were erected, but this fact was agreed to have no legal significance whatsoever.

As to the straightness of the line, Israel had the audacity to pretend in paragraph 8.75 of the Israeli Rejoinder that Wade, in his General Report, at page 50, was speaking about a straight line loosely between astronomical stations A.13 (that's BP 3) and A.11 (which is BP 27), conveniently overlooking that in the Israeli Memorial they had already set out at page 144 a quotation from the relevant passage of the same Wade Report which reads:

> "The first traverse ran across a wavy stretch of dunes from A.13 [that's astronomical point 13] to A.11 [astronomical point 11]. On the third day we reached A.13 keeping the line perfectly straight".

It seems hard to me to believe that "perfectly" may be understood to mean "loosely", unless I don't know the English language. The concept of looseness has been invented by Israel as the only possible justification of the established fact that Israel's location for BP 7 lies 57 metres and 98 centimetres west of the corresponding point on the straight line which is 7(E) -- the Egyptian point 7(E) -- in a straight line, and a perfectly straight line not loosely straight line. As the Tribunal is invited to observe, the straightness of the boundary line [PVR 41] [Tape No. 75] in this sector is striking if the 1935-38 map on the scale 1:100,000 is examined. As I previously mentioned, this illustration you have on a smaller corresponding scale in your Folder under No. 32. This illustration shows a diagram reflecting the straightness of the line here at that part of the boundary. This is the Egyptian point, I am saying that the Egyptian 7(E) is on a straight line, the Israeli 7(I) is deviating slightly from the straight line.

The Tribunal is also invited to examine this map in the light of the incorrect statement in the Israeli Rejoinder (para. 8.76) that BPs 8, 9, 10, 11, 12, 13, 16, 18, 19, and 21 all deviate from a straight line. You can check it yourself, Mr. President, I will not say anything more in this respect. The work of the 1981 Joint Commission clearly demonstrates that they used the newest available technology to achieve what Wade tried to accomplish in 1906 according to the

technology of that time. It would be hard to imagine a straighter line between BP 3 and BP 13 as demonstrated on the map.

I turn now to Boundary Pillar 14. We gave already our essential argument with regard to this pillar in the Egyptian Memorial, paras. 6.43-6.47; in the Egyptian Counter-Memorial, in paras. 6.56-6.59, in the Egyptian Rejoinder in para. 7.07. The additional comments in the Israeli Rejoinder all relate to the presence of the UN markers and have already been dealt with. The Egyptian location is based on the fact that BP 14 lies on a straight line with the pillars that precede it. The Egyptian written pleadings deal adequately with other points raised by Israel regarding this disputed location.

The only remark that we would like to emphasize in this respect is that, curiously enough, Israel, which insists so vehemently on intervisibility, advanced for BP 14(I) a location [PVR 42] which is not intervisible either with agreed BP 13 or with BP 15(I). That means the Israeli location for 15(I). Inconsistency.

Passing to Boundary Pillar 15. Our arguments are set in Egyptian Memorial, para. 6.48 to 6.50, in the Egyptian Counter-Memorial para. 6.60-6.61; and in the Egyptian Rejoinder para. 7.08. As a consequence of the dispute on BP 14, BP 15 became necessarily subject to controversy because it is the same principle of straightness. The issues which deserve further discussion here are (i) the map evidence; and (ii) the presence at the Israeli location of "stone pebbles" alleged to be remnants of the original masonry pillar.

As to the map evidence, the Israeli Pleadings assert that Egypt has not furnished maps with the Palestinian grid imposed. This is totally wrong. The 1935-1938 map was also furnished as Nos. 6-1, 6-2, and 6-3 in the Egyptian Map Atlas with the Palestinian grid imposed on the same map. Other such maps with the Palestinian grid are Nos. 15, 16, 17, 18, 19, 20, 23, and 24, which are all Israeli maps, and are included in our Atlas. So Israel have all the necessary information needed. The coordinates provided by Egypt with its Memorial were based on both the Egyptian and the Palestinian grid systems and taken from the 1935-1938 map. Egypt continues to maintain that the location of this pillar could be, and was, determined by electronic means based on this map on which the Egyptian team relied during the technical work of the Joint Commission. So there is no excuse with regard to where the Boundary Pillar should be [located], and in accordance with the established Boundary Pillar existing before.

As to the presence of the pebbles, Egypt has seen no evidence establishing that they are remnants of an original masonry Boundary Pillar. Egypt agrees that such pebbles, in view of the nature of the terrain, must have been brought to the site deliberately. But Israel has advanced no evidence as to when or by whom this was done. Even the language used by Israel confirms the existence of certain doubts about such stone pebbles here and at other locations. In fact, with regard to BP 7, that we already discussed, and BP 14, equally discussed before, Israel used the term "believed to be remnants" and when invoking the same argument later with regard to BP 17, Israel used the term "taken to be remnants". Moreover, it is one thing to have at a site an intact Boundary Pillar in good condition which bears all the indications of being the authentic original pillar -- such as at Gebel Fort-- and quite another to find a pile of stone pebbles which could have been put there at any time. We have already noted the inconsistency of this argument of Israel based on such remnants and its contention that the erection of the masonry pillars was no part of the 1906 demarcation process, a point already dealt with by Sir Ian Sinclair and Professor Bowett, so I am not going to elaborate on that.

The only observation that may be added in this respect relates to the fact that the Rafah area-- about which we are talking now -- is an inhabited area on the Armistice Lines, which has been the theatre of intensive military activities. Accordingly, the destruction of the Boundary Pillars is more understandable here, contrary to what happened in the southern mountainous area where no fighting practically took place.

Turning now to BP 17, we covered this sufficiently in our Egyptian Memorial, para. 6.51-6.53; Egyptian [Counter-Memorial, para. 6.62 and the Egyptian Rejoinder at para. 7.09] -- Mr. President, would you like me to stop?

The President: No, no.

Prof. El-Kosheiry: I will finish within no more than 10 minutes. [PVR 44]

There is nothing new to add to the discussion in the pleadings as to this pillar. Egypt based its locations on the 1935-1938 map. The small arithmetical difference in coordinates noted by Israel results from transferring the data from the description cards to this map on a scale of 1:100,000 -- which accounts for 5 metres on the ground.

Turning now to Boundary Pillar 27, we dealt with that [pillar] in the Egyptian Memorial para. 6.54-6.56; the Egyptian Counter-Memorial para. 6.63-6.65; and in the Egyptian Rejoinder at para. 7.10. The Israeli Rejoinder makes no additional comment on this disputed location.

However, we shall briefly mention that neither the Egyptian location nor the Israeli location contain today any remnants of the original pillar. Nevertheless, the Joint Commission did find in 1981 a concrete marker at location 27(E). This was confirmed at the time by aerial and ground photographs taken by Israel. These photographs figure in the Album submitted to the Tribunal. But the marker in question has since been removed by Israel. Location 27(I) is said to be based on a description card of 1955 for an Israeli triangulation point, which is identified as 559 Q, which is included as Annex 83A to the Israeli Memorial. The card contains a sketch of the point and of a concrete pyramid with a pipe. Neither the triangulation point nor the pyramid exist. Israel states that they were destroyed in the course of construction work in the area. So, no evidence. Notwithstanding the fragility of such unilateral self-serving assertion -- posterior to the relevant period-- the relevant period, let us be always taking into consideration, is 1922-1948, which is the Mandatory period in Palestine. The act in question was in '55, after that, which as a matter of evidence should not be taken into consideration. Moreover, this is in contradiction with the uncontested physical existence in 1981 of an incomplete concrete pyramid at location 27(E), which is the Egyptian location. It goes against the undisputed fact that the Egyptian location [PVR 45] coincides precisely with the coordinates of both the Egyptian and Palestinian grids.

Turning now to Boundary Pillar 46. We dealt with that pillar in Egyptian Memorial para. 6.57-6.60; and in our Counter-Memorial from point 6.66-6.67; and in the Rejoinder in para. 7.11-7.13. The Israeli Rejoinder makes no additional comment on this disputed location.

What has to be noted, however, is that the only pseudo-evidence advanced by Israel to support the location of 46(I) is the presence of a 4-inch iron pipe claimed to have been erected in the '60s, in the 1960s, in order to mark the Armistice Demarcation Line. Even if such assertion is correct, it has no legal value since the time limit relevant for the purpose of determining the "recognized international boundary" has been defined in Article II of the March 1979 Peace Treaty in a manner that could not logically extend beyond the period of the British Mandate on Palestine.

Whatever new evidence would appear after that, or new works accomplished, have no relevance whatsoever.

My colleagues Georges Abi-Saab, Salah Amer, Mofeed Shehab, and Talaat El-Ghoneimy have already mentioned the importance of having a time limit in which we take into consideration the conduct later on, which confirms that reality existing before, should be taken into consideration, but neither Party can create a new evidence after 1948. Consequently, any markers erected in the 1960s by UNEF or by Israel cannot legally have any evidentiary value. On the contrary the remnants of the original 1906 Boundary Pillar found at location 46(E) should be given full evidentiary credit. These remnants evidenced by the 1981 Israeli Photographic Album mentioned before were found on the straight line running from the cairns related to BP 47 and BP 48 which were accepted by both Parties as the basis for the agreement on the locations [PVR 46] of BP 47 and BP 48. 47 and 48 are not disputed. Israel's statement that those cairns at the latter two locations were found to the west of the line is simply an allegation not supported by any evidence.

Turning now to BP 51, we dealt with that in our Memorial, paras. 6.61-6.63; Counter-Memorial point 6.68; and Rejoinder from paras. 7.14-7.16. The Israeli Rejoinder makes no additional comment on this disputed location. At the same time, the main arguments raised by both Parties are a replica of what has been said with regard to BP 46. Therefore, we find more appropriate to refer simply to what has been just said concerning BP 46, and we leave it at that point.

BP 52. The Israeli Rejoinder, para. 8.88 conceded that the official Turkish map annexed to the 1906 Agreement shows BP 52 on a straight line between BP 51 and 53. This is the Israeli [first submission]. But it hastens to declare that: "the Turkish map cannot be regarded as reliable on this point". In essence, for Israel, that official map forming an integral part of the 1906 Agreement can be reliable whenever it suits the Israeli ambitions, and not reliable on points which are contrary to the Israeli allegations. Such a curious attitude defies all logic, and puts Israel as the sole judge to disregard whatever does not suit her interests among the results emerging from the works of the 1906 Boundary Commission.

Finally, the thirteenth disputed pillar is BP 56. This we dealt with in our Memorial para. 6.69-6.71; in our Counter-Memorial at para. 6.71; and in our Rejoinder at 7.21. The Israeli Rejoinder makes no additional comment on this disputed location which raises the same arguments advanced by both Parties with regard to BP 46 and BP 51. Therefore, we are not going

to burden the Tribunal with [PVR 47] hearing anything of a repetitive nature.

I come now to the conclusions. On the 13 Boundary Pillars as a whole there are only a few concluding remarks that I would ask the Tribunal's indulgence to elaborate upon for a very few minutes.

First, Israel finds no difficulty in swinging on the same issue from one attitude to the extreme opposite direction in defiance of the established rules governing the procedures and evidence in front of international courts and arbitral tribunals, as well as those rules pertaining to the remedies available, particularly in the field of territorial claims.

Among the basic general principles of law, Bin Cheng, in his book which is certainly known to Mr. Lauterpacht because it is published in Cambridge by the Grotius Society. [Tape No. 76] In Bin Cheng's authoritative book he includes, without the slightest hesitation, among these general principles what he calls on page 141, allegans contraria non est audiendus, which means that no party should be allowed to blow hot and cold, to affirm at one time and deny at another (Cambridge, 1987, pp. 141-149).

This general principle of law has been successfully pleaded by Professor Reuter in the Temple Case; you heard a lot by my colleagues on the Temple Case and the judgment, I will not enter into the judgment, or add anything to the judgment, but I am looking from behind the scene to what led to that judgment, i.e. to Professor Reuter in his pleadings. These Pleadings are published as an official publication of the I.C.J., Vol.II, at p. 205. He established what should be the rules in this respect.

The present case is a perfect illustration of how a desperate Party in a territorial arbitration proceedings blows [PVR 48] hot and cold at the same time, thus claiming that scattered unidentifiable remnants of doubtful origin are of great relevance, when it suits its interests, at the same time, denying any relevance to the border stone pillars erected by the Boundary Commission in accomplishment of its demarcation mission and which are still existing today.

Second, in order to justify the exclusion of "masonry truncated square pyramids with flanges on top" and engraved numbers found on the ground in perfect condition, Israel advances the argument that they are not to be considered "authentic", in the sense that Israel reserves the right to evaluate in the 1980s the work done by the Egyptian-Turkish Boundary Commission accomplished in 1906-1907, and to deny any relevance to

markings which Israel deems to have been "placed in error and in variance with the original Agreement of 1906". That is what Israel is pretending.

In this so-called verification control, Israel has in fact sought to achieve the physically impossible. If the existing pillars will not leave the mountains, then the mountains must leave the pillars. If the geography does not support the Israeli claims, then change the geography. Hence, to serve the Israeli interests Gebel Fort has to shift westward, and Gebel Fathi Pasha to move a good two kilometres also to the west. It is not simply a case of parturient montes est nascitur ridiculus mus, which, for the benefit of those in the audience who are, what we call in French "les sans latin", I will also express in Arabic, which is an official language in Israel, the equivalent: (Arabic quotation). The mountains not only have to strain to give birth, they have to change their position in doing so. And the end result is still a ridiculous mouse, not as amusing as Mickey Mouse.

In advancing such enormities, Israel forgot one of the basic lessons of the Temple Case, where Thailand invoked the "error" argument and totally lost. [PVR 49] The judgment of the International Court of Justice, elaborated upon by my colleagues, Abi-Saab, Amer, and Shehab, can be fully understood in the light of the basic principle put forward by Professor Reuter, when he insisted with his great authority on (I am quoting French because Reuter was pleading in French), "la vertu conciliatrice du temps", we will find this on p. 207 of this pleading, that "tout droit affirmé et exercé se consolide par le temps", (p. 208 of his pleadings); that "le temps exerce une influence puissante sur l'établissement et la consolidation des situations juridiques, notamment en matière territoriale" (p. 203 of his pleadings).

Accordingly, the late Dean Acheson submitted to the Court that, I quote from Dean Acheson who was pleading for Cambodia in that case:

> "claims of error this way or that way, in a delimitation intended to be final and executed half a century ago [here we are eighty years] should not be viewed with an indulgent eye."

This you will find it at p.464 of the Pleadings in front of the International Court of Justice.

I will conclude, Mr. President, by repeating without any comment on my part, the same plea that the eminent lawyer and American statesman, Dean Acheson expressed when he said emphatically, addressing the International Court of Justice (this was in his

pleadings at the same page). He said the following, I am quoting Dean Acheson:

> "this Court should look with horror upon the repetition of what we have been going through, if someone on either side of the border should interest his Government in claiming a few more acres one way or the other in order to satisfy some local interest or some imagined national prestige."

Thank you, Mr. President. [PVR 50]

The President: So the Hearing is closed now for the time being until we meet again at 3 o'clock, but downstairs now, downstairs again.

الملحق الثاني - الحق (ب)

مستخرج من

المضبطة الرسمية لوقائع جلسات هيئة التحكيم

اجتماع يوم ١٢ ابريل ١٩٨٨ الجلسة الصباحية

مرافعة أحمد صادق القشيرى خلال المرحلة الثانية

فيما يتعلق بعلامات الحدود الثلاثة عشرة الاولى

المتنازع عليها

(الصفحات ٧٧٦ ـ ٧٩٨)

ANNEX II - (B)

EXTRACTS FROM
THE OFFICIAL VERBATIM RECORD
OF THE ARBITRAL TRIBUNAL'S
HEARING ON 12 APRIL 1988,
MORNING SESSION

THE ORAL PLEADING OF
AHMED S. EL-KOSHERI
DURING THE SECOND ROUND
WITH REGARDS TO THE THIRTEEN FIRST
DISPUTED BOUNDARY PILLARS

(PAGES 776 - 798)

Mr. Elaraby: Professor Ahmed El-Kosheiry will start now, Mr. President.

The President: Yes please.

Prof. El-Kosheiry: Mr. President, distinguished Members of the Tribunal, it falls to me once again to discuss the location of the disputed pillar locations other than 91. This time, however, I precede Professor Bowett who will discuss Boundary Pillar 91 since certain points which I shall bring out have a direct bearing on what he will say.

I have organized this discussion largely around the pleading of Mr. Walden, Israel's Deputy Agent during the Afternoon Session of Wednesday, 23 March. However, I shall mainly concentrate on the disputed locations in the Ras el Naqb area since there is very little to be added with regard [PVR 2] to those disputed pillars located north of BP 83 at Thamilet el Radadi.

It has to be equally noted that I shall make no attempt to deal with each and every allegation in Mr. Walden's statement, since so much of it has already been dealt with before in either Egypt's written or oral pleadings and many of his assertions are not supported by any evidence. Matters which I do not take up again, however, may not be deemed to have been admitted.

I shall focus mainly on the three basic propositions on which the entire Israeli thesis is based with regard to the Ras el Naqb area. These three propositions can be summarized as follows:

First, although Israel recognizes the existence of boundary pillars in good standing at the Egyptian locations, these pillars are treated as having no legal effect.

Second proposition. In order to sustain that proposition, the first one, Israel advances a rather curious assertion, according to which the permanent masonry pillars were erected in places other than those of the temporary telegraph poles. But Israel has totally failed to provide throughout the pleadings the slightest piece of evidence to support this assertion which serves as the essential premise without which the third proposition could not have any significance.

The third proposition is the following: Israel alleged that during the final phase of demarcation, when constructing the masonry pillars more than 80 years ago, a series of errors had been committed. Hence, in order to attack the status quo ante definitively established without giving rise to any challenge or controversy prior to the beginning of the present arbitration, Israel has no other alternative but to invent a new play-game called the misplacement of the geographic features whose names appear in Article 1 of the [PVR 3] 1906 Agreement between the Ottoman Empire and its vassal province, Egypt.

I'm taking now the first proposition just mentioned which has been clearly formulated by Mr. Walden when he stated, in the transcript at page 4: "Yes, Israel does not deny and has never denied the existence of pillars at [the] locations claimed by Egypt". He was referring, of course, to the evidence that intact masonry pillars in good condition, i.e., the original pyramids with iron flanges, protruding and with numbers engraved on the pillars, do exist at the Egyptian locations for Boundary Pillars 84, 85, 86, and 87. The photographs of the first three of these pillars which appeared in Egypt's Memorial may be found as numbers 36 and 37 in the Tribunal's Map Folder. I invite you now, Mr. President, to look into 36 and 37. In 36, there is a Boundary Pillar and the numbers put down in large [letters] are 84 and if you can take your magnifying glasses you will see them in both Arabic and English upon, engraved on 84 in the way we write in the Arabic world nowadays le chiffre and 84 in what used to be the Arabic sort of way of writing before. If you would permit me just at the back of the same number 36 you will find 85. This is pillar 85 at the back of [No. 36]. And then you have 86 at number 37 in your folder -- 86 -- we have it here enlarged,

Mr. President, because it has a certain importance because it shows behind it Gebel Fathi Pasha and here also, we can see the 6 and the 8 in Arabic are here and less evident is the sort of 86 in English or in French. But these are photos that had been taken after the Peace Treaty during the time when the Joint Commission was inspecting the locations. But Israel refuses to accept this as conclusive evidence, in spite of the fact that Israel continues to argue with regard to other locations claimed by Israel for the relevance of certain piles of stone pebbles. This is the inconsistency [PVR 4] that we have talked about during the first round of our pleadings. They deny any significance of such pillars and they claim that certain stones have greater importance.

We move now to Israel's central position -- that's the second proposition -- which serves as the only way out of the dilemma as to how to reconcile Israel's non-acceptance of the masonry pillars in the Ras el Naqb area as conclusive evidence with the reliance by Israel on the existence of stone pebbles said to have been found at other locations. This is the only way they reconcile it by the following: in order to overcome the objection of inconsistency that we raised before, Israel adopts the distinction between what is claimed to be authentic remnants, authentic remnants, in contrast to the so-called masonry pillars said to have been wrongly built in January 1907 at locations other than those initially identified by the Commissioners when they fixed in late 1906 the temporary telegraph poles.

Mr. Walden formulated this argument in the clearest possible manner when he said, I'm quoting from transcript at page 5. This is what Mr. Walden said: "Even if we assume, for the sake of argument, what has by no means been proved, that the pillars standing now were actually those erected during the final phase of replacing temporary pillars by permanent ones, this will not help Egypt, since by the time the permanent pillars were erected the demarcation was complete. And all that was involved was the replacing of telegraph poles by masonry pillars. As for the telegraph poles themselves [these] certainly were put in the right place." [Tape No. 177] [PVR 5]

What I found quite remarkable in the above-stated paragraph is Israel's extreme insensitivity to one of the basic rules of evidence with regard to the burden of proof, a rule not only so deeply rooted in the administration of justice by international tribunals, but equally within the framework of all domestic legal systems. This is the general principle onus probandi actori incumbet, as expressed in the Queen Case (1872); in the Taft Case (1926); in the Palmas Case that was referred to yesterday, (1928); in the Chevreau Case

(1931); in the Corfu Channel Case (1948); the United States Nationals in Morocco Case (1952). In concluding his masterly elaboration on that general principle, at pages 326 to 335 of his book already referred to in my statement during the first phase of the oral hearings, Bin Cheng emphasized that, and I quote from Bin Cheng. (All these cases had been elaborated upon in a masterly way by Bin Cheng in the last edition, the '87 edition of his General Principles of International Law.) I quote Bin Cheng, he says,

> "...there is in substance no disagreement among international tribunals on the general legal principle that the burden of proof falls upon the claimant; i.e. the plaintiff must prove his contention under the penalty of having his case refused. Actore non probante reus absolvitor". (This at page 334 of Bin Cheng.)

The learned author made it clear immediately thereafter that the term "burden of proof" may be used in a restricted sense:

> "...as referring to the proof of individual allegations advanced by the parties in the course of proceedings.... The burden of proof rests upon the party alleging the fact, unless the truth of the fact is within judicial knowledge or is presumed by the tribunal. In the absence of convincing evidence, the Tribunal will disregard the allegation". (This is on page 334-335 of Bin Cheng's book.) [PVR 6]

Returning to Mr. Walden's statement in the light of the above-mentioned basic rule which forms an essential element in the law of evidence, it would be easy to ascertain that it is up to Israel, and not to Egypt, to prove that the pillars standing now in the Ras el Naqb area are not those erected during the final phase of replacing the temporary telegraph poles by permanent masonry pillars. And it is equally up to Israel and not Egypt to prove its allegation that the Commissioners had committed a series of errors in putting the permanent pillars in locations other than those of the initial telegraph poles, which were certainly put in the right place, as Israel concedes. On both issues, Israel is, technically speaking, the claimant who tries to introduce arguments aimed at challenging the existing facts. Hence Israel is undoubtedly the actore non probante reus absolvitor, whose failure to advance the slightest piece of evidence to sustain such allegations must lead the Tribunal to adjudicate purely and simply in favour of the Egyptian locations in the Ras el Naqb area without any need to bother about the third Israeli proposition, I mean the game of mislocating geographical features.

Furthermore, it has to be noted that Mr. Walden's statement seems to be self-contradictory. Israel says it does not accept that the permanent pillars were placed where the initial telegraph poles stood, and yet Mr. Walden suggests what a routine task this was. We know from Owen, we all know from Owen, that the Commissioners took the precaution, as they were putting in place the telegraph poles, of having present, to observe this phase of the operation, both a Turkish and an Egyptian officer. This whole story is fully covered in paragraphs 3.62 to 3.67 of the Egyptian Rejoinder and has been referred to by Sir Ian Sinclair yesterday, but let me mention briefly the important aspects of this argument.

Owen wrote at pages 42-43 of his General Report that an [PVR 7] official of the Egyptian Works Department, named El Mufti, and a Turkish officer coming from Bir Saba, what is now known as Beersheba, accompanied the demarcation all the way from Rafah to the Gulf of Aqaba. He said that two of them would return during the building of the pillars. He explained that this was in order, I quote from Owen, "to see the exact position of each pillar, which will be afterwards built of masonry, on the site of each telegraph pole".

Mr. President, in the circumstances was there really any possibility of error in that final phase of demarcation, the replacement of the poles with masonry pillars? And Mr. Walden, as just quoted, asserted that the poles were certainly put in the right place. So there is very little, if any, chance that the original pillars that are found at such locations as Boundary Pillars 84, 85, 86, and 87 were misplaced.

But this is not all the story. The Parker Diaries reveal that the Turkish members of the Joint Commission named Muzaffer Pasha and Fahmi Bey, returned to Taba on 31 December 1906. This is the famous [photograph] E appearing after page 28 of the Egyptian Rejoinder that Sir Ian had referred to yesterday, which shows all of these three persons gathered at Taba that date. I would not need to bother you once again to see that picture which is in your folder, that's under number 35. You will see clearly that the three persons, the two Turkish and the Egyptian, are the ones in the black suits at the middle of that page.

I again refer to the discussion in the Egyptian Rejoinder, this time at paragraphs 2.07 to 2.10. Whether this photograph was taken at the site of BP 91(E) or at some other site is not clear. We cannot even identify that. It was clearly taken at Taba, as Parker's diary states. Hence, the return of the Turkish Commissioners to Taba to begin the overseeing of the installation of the permanent pillars is

undeniable. The gentlemen in dark tunics are Muzaffer Pasha, Fahmi Bey, and Ismail Mufti, the first two being the Turkish [PVR 8] Commissioners on the Boundary Commission, as I just said.

In these circumstances, Mr. President, [Tape No. 178] what possibility of error in placing the permanent markers existed? It is, thus, quite natural that when the Joint Commission began its work in 1981, it was agreed that the presence of Boundary Pillars would be regarded as prima facie evidence of the location of the pillars in dispute. I refer in this regard to the documents contained in Annexes 86, 87, and 88 of the Israeli Memorial. Annex 86 is an outline for the working plan of Phase II of the Joint Commission's work and bears a date of 20 September 1981. Under paragraph 1.C., which concerned the description of the work method to be employed the instructions read: "locating the existing border stones on aerial photographs and in sections where these boundary stones are missing to locate the points of the boundary according to the description in the 1906 Agreement".

Annex 87 is a memorandum of the same date entitled "Demarcation of Lines". It is a resumé of the conclusion reached at the Yugoslav camp by the survey sub-committee; it is full of references to information concerning the existing border stones.

Paragraph 1.B contains the following statement: "It was agreed that these stones will serve as a starting point to the delimitation of the International Boundary after establishing their location by both sides".

Then comes the third memorandum -- Annex 88 to the Israeli Memorial, dated 8 November 1981, which is entitled "Demarcation of the International Boundary". I should like to quote paragraph 4 in its entirety. This has been referred to by both my colleagues, Professor Abi-Saab and Sir Ian Sinclair yesterday but I would like to quote the entire paragraph No. 4. It starts with the following: [PVR 9]

> "In former meetings of the Joint Commission and of the sub-committee on the demarcation of lines two authentic sources" -- two authentic sources-- "have been agreed upon for the identification and delimitation of the International Boundary. They are: (a) the positions of the border stones erected in 1906. They designate best 'the International Boundary between Egypt and the former mandated territory of Palestine'." They designate best" -- then comes paragraph (b)-- "The verbal description of the International Boundary of the 1906 Agreement. Where no border

stones exist this authentic source should be used."

So whenever there is an authentic source, border stones erected in 1906, [there was] no other way but to recognize them. Only in the absence of such Boundary Pillars, then the reference to the verbal description of the International Boundary in the 1906 Agreement would take place.

In other words, existing border masonry pillars were to be regarded as the best evidence of the administrative dividing line between Egypt and the adjacent Ottoman Provinces as demarcated by the Commissioners in 1906-1907. How possibly can what Mr. Walden said be squared with this evidence introduced by Israel itself as to the attitude of the Joint Commission in 1981, namely, that the position of the border stones erected in 1906 was the primary evidence on which their Joint Commission should rely? Given the precautions taken in 1906-1907 to assure that the pillars were properly placed, and which we have just reviewed, the position of the Joint Commission in 1981 is entirely understandable.

Having disposed of the central, but non-substantiated, Israeli proposition about the alleged shifting of the pillars in Ras El Naqb area during the second phase of the [PVR 10] demarcation in early 1907, I shall, nevertheless, undertake in the coming few minutes to take up the third and final Israeli proposition on the assumption that the argument of having misconceived in 1906-1907 the correct places of all relevant geographic features could stand alone independently from the premise that the permanent masonry pillars where they exist today are not at the initial locations of the temporary telegraph poles.

In other terms, what would the legal situation be if we assume that Mr. Walden should come later this week with a new line of argument according to which the Turkish and Egyptian Commissioners who negotiated and signed the 1906 Agreement were such fools that they had mistakenly drawn the agreed dividing line on the official map attached to their Agreement, that, equally, they were unable to understand where Wadi Taba ended or to correctly identify Gebel Fort, that they were capable of such stupidities as to erroneously give the name of their colleague Ibrahim Fathi Pasha to a location other than that which they contemplated when preparing the text of the Agreement just a short while before, as well as confusing the crossroad Mafrak with another junction a few kilometres away?

That type of suggestion would mean, in the final analysis, that Israel wants to extend the role of the Tribunal to the making of a new border line different

from the one delimited and demarcated in 1906-1907 on the basis of a fresh Israeli redefinition of all relevant geographic features which has nothing in common with the understanding which the Turkish and Egyptian Commissioners had some eighty years ago when they accomplished their mission. In trying to do so, Israel would be invoking the 1906 Agreement not as secondary evidence to trace the historical development and the manner in which the boundary between Egypt and mandated Palestine matured but as an international instrument directly conferring title to Israel. The absurdity of such a [PVR 11] proposition has been sufficiently established in the Egyptian written pleadings and by my colleagues during the oral hearings, including what was said yesterday by Professor Abi-Saab and Sir Ian Sinclair. This is due not only to the very nature of the 1906 Agreement as emanating within the framework of the Ottoman administrative law and by no means an international law instrument, or because Israel was not a party thereto and never became a successor to the Ottoman Empire, but it goes over and above against the sound legal principle prevailing in contemporary public international law which Professor Reuter expressed when indicating with regard to the frontiers and other territorial regimes that all the doctrinal authorities are of the opinion that in this domain, the legal effects should be considered "une conséquence de la situation créée par le traité", and not to be attached to the Treaty itself. [Tape No. 179] Professor Abi-Saab mentioned the themis of Professor Reuter in '58, I am mentioning a recent book written by Professor Reuter, "Introduction au Droit des traités, 1985, p. 109. In other terms, an agreement, even if considered emerging under public international law, could not be invoked as a juridical act, to be construed and interpreted as such, but the interested parties are only entitled to rely on the objective situation resulting therefrom and which matured as a given reality.

Accordingly, any subsequent reference to the 1906 Agreement should be understood exclusively within the context of providing the required clarifications about the historical background explaining how the demarcation process had been carried out. Such reference is simply directed to the explanation of the manner in which that "situation créée par [PVR 12] le traité" emerged. In other terms, what we are undertaking is quite the opposite of Israel's attempts to invoke ex post facto alleged interpretations of an agreement assimilated to a treaty in order to destabilize the situation which prevailed during 80 years on the ground without the slightest challenge and is still visual today as witnessed by pillars on the ground.

In this respect, we have to start by indicating that Mr. Walden, in his statement, relied throughout on the initial English translation of Article 1 of the 1906 Agreement. Why did he do that when with its Rejoinder Israel offered a translation by an expert, Professor Amnon Cohen, which differs in a number of important respects from this English text? The reasons become apparent when the two texts are compared, and let me say that although there are differences between Professor Cohen's translation of Article 1 and that furnished by Egypt with its Counter-Memorial in Annex 4, the differences do not appear to be material in this respect. Here are some of the textual differences between the early English text and the expert translations.

(a) Neither expert translation refers to the starting point on the line as being at the "point of Ras Taba". They both refer to "Ras Taba" tout court. I will leave it to Professor Bowett to develop this point.

(b) Neither expert translation refers to the line as, to quote from the English text, "following along the eastern ridge overlooking Wadi Taba to the top of Gebel Fort". In the Egyptian expert translation, the line begins at Ras Taba -- and again I quote --"extends to the summit of the mountain called Jebel Fort passing by the summits of the mountains lying east of and overlooking Wadi Taba". In Professor Cohen's version the line which begins at Ras Taba -- I quote once more-- "arrives at the hill called Jebel Fort while passing by the heights that [PVR 13] are situated at the eastern side of Wadi Taba and overlook this Wadi."

All versions, including the English translation from the Turkish original text, as annexed to Wade's Report, refer to the fact that the separation line is shown on the map attached to the Agreement. The map in question being Map No. 21 in your folder. All of them, they mention that map which we provided as Map No. 21. We will return to it in a moment, but I am just making the point that all versions -- the Wade translation in English, Mr. Cohen's translation, the Egyptian translation -- all of them, have something in common: the reference to the fact that the separation line is shown on the map attached to the Agreement. This is part of Article 1. For reasons that I cannot understand, Mr. Walden left out this clause when quoting part from Article 1 in his statement (please refer to it, I am not putting something -- unless I misunderstood that transcript at page 3). He dismissed that point. He just forget to mention the reference to a map attached into the Agreement.

Egypt submits that this map has paramount importance in adjudicating the present case. I remind the Tribunal of the extract read by Mr. Lauterpacht from the Judgment of the Chamber of the International Court of Justice in the Burkina Faso case. This is, you will find it in the transcript for 22 March, Afternoon Session, starting at p. 56, where such a map was placed at the top of the hierarchy of map evidence referred to there. The Judgment referred to the intrinsic legal force to be attributed to maps annexed to an official text of which they form an integral part. This authentic Turkish map annexed to the 1906 Agreement is just such a map. The Egyptian Agent has already shown the basis on which the Tribunal may regard the copy of the Turkish map furnished by Egypt with its Counter-Memorial as being a copy of the authentic map attached to the 1906 Agreement. I will be referring to this official map [PVR 14] from time to time for it portrays the boundary line in the Ras el Naqb area as according with the Egyptian and not at all with the Israeli position. I might mention also, anticipating what Professor Bowett will cover, that at Taba it shows the boundary terminus at the point to the east of a triangle clearly marked "A.1".

Returning again to the essential difference between the English translation used by Mr. Walden and the recent expert translations introduced by both Parties, I mentioned that one difference is between the words "eastern ridge" that appear in the old English translation and the words "summits of mountains" or "heights" that appear in the other two texts. It is an essential element in Israel's attempt to mislocate the boundary in the Ras el Naqb area that, first, to consider that the eastern ridge mentioned in the early English text should run almost all the way northward to Gebel Fort, and second, that it should overlook Wadi Taba from the east throughout that distance. It is on that eastern ridge to which the imperfect English old translation refers that the Boundary Pillars between Boundary Pillar 89 and Gebel Fort must be located according to Israel.

To achieve Israel's aim of shifting the line in the Ras el Naqb area far to the west, as I pointed out in my statement in the first round, Israel has first identified an unnamed wadi as Wadi Taba; has, second, misnumbered Gebel Fort as BP 86(I) rather than BP 87; has, third, inserted an additional Boundary Pillar between Boundary Pillar 89 and Gebel Fort which can find no justification in Article 1 or in the reports of Wade or Owen. And has, fourth, in locating Boundary Pillars 85(I) and 86(I), ignored totally the detailed instructions of Article 1 of the 1906 Agreement and Wade's technical explanation as to how these Boundary Pillars were located. You will recall, Mr. President, that this geometrical alignment by Wade was set out at

pages 55 and 56 [PVR 15] of his Report, together with a sketch. These appear as No. 28 in your map folder together with a sketch which properly orients Wade's sketch found at No. 29. [Tape No. 180] At No. 28, that's his description in his Report and on the back of it you will find this sort of geometrical alignment that he explained. Then, following at No. 29, you will find how to put that geometrical form on the ground, how it has been done, and this was the subject of examination and cross-examination of Dr. Dowmann during the first phase of these oral hearings. It was not contested to the best of my knowledge by Israel. You will recall, Mr. President, that this geometrical alignment by Wade was set, as I said, in these pages that I showed, together with a sketch. These appear, as I said, in your map folder at No. 28 and 29. Israel's location for Boundary Pillars 85 and 86 bears no relation at all to what Wade described as the manner in which he carried out the instructions of Article 1 to locate these boundary positions since they are not on a straight line with Boundary Pillar 87, as required by Article 1 of the 1906 Agreement. Article 1 states very clearly that they should be on a perfect straight line with Gebel Fort, with BP 87, and certainly the Israeli locations are far from being on a straight line.

As I proceed to explain these distortions by Israel in order to achieve its objective of shifting the line in the Ras el Naqb area radically to the west, the utility to Israel of using the incorrect English translation from the Turkish original text will become apparent. That was the only way, that's why they dismissed the two other translations -- because the only one that can serve them is the one that is referring to a ridge where, in fact, the Turkish original doesn't have any ridge; and where they can pretend [PVR 16] that the Wadi Taba is going to the north along the middle, unnamed small [inaudible], and that's the way they can save their mislocation of that entire area. Of course, it is evident that the Turkish and indeed the Egyptian Commissioners in 1906 knew the correct meaning of the 1906 original text. Both were fluent in Turkish and in Arabic. And there is therefore no justification for Israel to continue to use a translation which its own expert does not support -- Professor Cohen.

In passing, I should like to observe that Professor Cohen's translation referred to Gebel Fort as merely a hill rather than a mountain. Further along, I will remind the Tribunal of this in discussing Israel's arguments for relocating this feature far to the west of its real location on the basis that Israel's location has a so-called fortress-like appearance.

Mr. President, I now turn to what is the key to the location of the Boundary Pillars in Ras el Naqb sector of the boundary, that's the location of certain geographical features. Mr. Walden listed three groups of features whose location Israel considers to be critical: the extent of Wadi Taba in relation to the eastern ridge -- that's the first point -- Gebel Fort and Gebel Fathi Pasha. I will take them one by one, but not in the same sequence. I will start with the geographical limits of both Wadi Taba and the so-called eastern ridge. But, then I will come, I will take Gebel Fathi Pasha before Gebel Fort because we will understand, and I hope I have tried to explain during the first round, why Gebel Fathi Pasha is the key and Gebel Fort can only be understood, its right location, in relation to where Gebel Fathi Pasha is located.

To begin with, Israel is wrong in pretending that either the location of the eastern ridge or Wadi Taba is germane to the location of the Boundary Pillars between BP 89 and BP 83. I have already shown that the arguments of Israel based on the [PVR 17] continuation of the eastern ridge to Gebel Fort are based on an English translation of the authentic Turkish text now disavowed by the experts of both Parties. Taking Professor Cohen's text, the line that runs between Ras Taba and Gebel Fort passes, and I quote again from Professor Cohen's translation, "by the heights that are situated on the eastern side of Wadi Taba and overlook the Wadi". There is no mention of a ridge. This does not speak of a continuous ridge, nothing of the sort we can find in that translation.

So, the continuation of the eastern ridge up to Gebel Fort is a fiction that has no basis in Article 1 of the 1906 Agreement. It equally has no basis in the Report of Wade. Wade did not refer to an eastern ridge as such. His Report for 18 October states that a beacon was set up -- and I am quoting from page 65 of his Report -- on the east cliff at a point from which the beacon of Gebel Fort is visible. And the word "fort" is placed between quotation marks, that is <u>entre guillemets</u>, as we say in French, suggesting that it did not really have the appearance of a fort. This bears out Professor Cohen's translation of the feature as a hill, as I have just mentioned. He doesn't use the word "mountain", he used "hill". I continue to quote from Wade -- "Then two more along the line of eastern cliffs to Taba and one at the point where they strike the Gulf", end of quotation from Wade. There is no suggestion at all in Wade of an eastern ridge or even a line of cliffs running to Gebel Fort. The Commissioners had already left Gebel Fort well behind on their journey southwards when they began to place beacons on the east cliffs.

As to the relevance of location of Wadi Taba, in its oral pleadings, Israel has misrepresented what Egypt has said and continues to say about Wadi Taba. Egypt's position remains as follows. As shown on the 1906 maps, which are Owen's map, Wade's map, as well as the [PVR 18] Turkish map attached to the 1906 Agreement, Wadi Taba terminates at a point to the northwest of BP 89 at a distance of about 600 metres. Colonel El-Shenawi will demonstrate to you where it is. I want to make it very clear. Our point of view, which has never changed during these proceedings, is that Wadi Taba as such ends here. You will see, when there is the bifurcation here, a number 105. Our submission has been always, and is still, that Wadi Taba ends there at this point. What is called Wadi Taba ends there. Another story starts from there on, but Wadi Taba properly speaking ends there. Thereafter, to the north are three tributary wadis. Two have names, which appear on many maps. Wadi Gasairiya, on the east, and Wadi Haneikiya on the west. The middle tributary wadi has no name, as you see, no name, and has never had any. Egypt is not aware of any map where this middle wadi is named, and Israel has produced no evidence in the form of maps or otherwise which supports calling this middle wadi "Wadi Taba".

Mr. Walden stated that Egypt has shifted its ground as to Wadi Taba. He said, its at page 8 of the transcript: "The argument now presented is that the upper part of Wadi Taba is that commonly known as Wadi Gasairiya." Mr. Lauterpacht during the Tuesday afternoon session of 22 March, transcript at page 22, made the same misrepresentation of Egypt's views, referring to Wadi Gasairiya as "the Egyptian Wadi Taba". Egypt has not said this at all. As commonly known, Wadi Taba extends only to a point northwest of BP 89, in the general location where the three northern tributaries flow into it. Like many features in the desert and elsewhere, the precise point where Wadi Taba ends has not been pinpointed on maps. But it certainly ends where Wadi Gasairiya feeds into Wadi Taba. Looking at the map on the easel, that's Map 2A and which is in your folder under No. 26 -- an enlargement of it is here -- if you [PVR 19] would like, Mr. President, to look yourself at what you have as 26 in your folder, you will find the point 105 where the bifurcation of the three tributaries is. And at that point, number 105 appears at the juncture of Wadi Gasairiya and Wadi Taba which is around 600 metres northwest of BP 89.

The misunderstanding, Mr. President, may have emerged from the example I gave during the first round about "<u>les grands boulevards</u>" -- <u>les</u> avec "s" ou <u>grands</u> avec "s" and <u>boulevards</u> avec "s". The provisional transcript put it, <u>le grand boulevard</u>, <u>le grand boulevard</u>, which is wrong, totally wrong. It is always

in the plural. In France, nobody would say "le grand boulevard", les grands boulevards -- it is a series of boulevards. And what I treated, I tried to explain, was simply as a demonstration to say that the grands boulevards, the grand wadis, are like -- are alike-- and le Boulevard des Capucines, let us say the Wadi Taba, continues to become Boulevard des Italiens, Wadi Gasairiya. But in no way, a rue of lesser importance, like the unnamed tributary, can become a boulevard. That was the image that I wanted to give: that boulevards are boulevards. A small rue or ruelle cannot become a boulevard even if it gives traffic to the grand boulevard.

In other terms, what Egypt has pointed out is that the major tributary of the three wadis, the principal water-course flowing into Wadi Taba from the north is Wadi Gasairiya. I will not go through this demonstration again. I only remind the Tribunal that it is shown on Figures 2 and 3 following page 92 of the Egyptian Rejoinder which also appear on alternative sides at No. 27 in your map folder. The examples that I refer to and what has been given before is that a wadi can lead to another wadi which is the continuation of it and so on. Thus, if Wadi Taba were to be considered as extending further northward, it would be along Wadi Gasairiya, the main wadi to its north. But that is all Egypt has said. The eastern and western wadi tributaries do not bear the name Wadi Taba. It [PVR 20] was just as obvious in 1906 as it is today that Wadi Gasairiya is the main water-course feeding into Wadi Taba from the north, whether or not the surveyors in 1906 were aware of some of the differences between the wadis in respect to the relative steepness of the slopes and the significance of these differences, as Mr. Walden remarks at page 9 of the transcript of his statement. I am referring to the diagram which was Figure 3 following page 92 of the Egyptian Rejoinder and explained there (that's at the back of document No. 27 in your map folder, Mr. President). This is a reproduction of something that was in the Rejoinder. I went through it during the first round. I would not bother you by returning back to these details.

The fact that the middle wadi bears no name is not "curious" as Mr. Walden suggested at page 8 of his transcript. Many desert features of no special significance, particularly in relatively desolate regions such as this, are unnamed. What Mr. Walden attempted to do was to give it a name by an exercise of imaginative thinking not supported by any existing data. But imaginative deductions are of no use with regard to desert geography or place names. No doubt, if London or Paris or any other city were selected, the most illogical examples of the naming of streets and other features could be unearthed and they are not the

desert, where no municipality or city council exists to exercise the functioning of conferring new names on previously unnamed places.

But, there is a "method in the madness", if I can paraphrase Shakespeare. It is an essential element in Israel's case for the location of disputed Boundary Pillars between BP 89 and 83 at the Israeli locations, to give the middle wadi the name Wadi Taba. That's the name of the exercise. They want it because that's the only way they can claim there has been an error. This enables Israel to give some kind of justification for moving the line westwards. And Israel tries to cover up its own deception by finding an [PVR 21] alleged shift in Egypt's position resulting in continuing Wadi Taba northward along Wadi Gasairiya.

In this regard, Israel's position is again based on the early English translation of Article 1 of the 1906 Agreement and the assertion that, according to this incorrect translation, Wadi Taba as misidentified by Israel, continues almost up to Israel's location of Gebel Fort. Well, it is not clear here. This, then, permits Israel to place the location of BP 87(I) to the east of the middle wadi, which it has arbitrarily given the name of Wadi Taba, and then to misplace Gebel Fort to the north of the end of this wadi, resulting in a major shift in the boundary line in favour of Israel. This is what Colonel Shenawi is now demonstrating on Map 2A, which is Map 26 in your folder, Mr. President. They try to divert it by saying "this is the middle wadi, so it is to the east of it", and continuing and that's the only that would justify the diversion from a straight line as indicated in Article 1 of the 1906 Agreement to this sort of western direction that they are pretending. The whole exercise, however, is based on a misreading of Article 1 and on false geography, as I have shown. Then, by misrepresenting. Egypt's position and by contending that Egypt would extend Wadi Taba northward along Wadi Gasairiya, Israel can assert that the boundary line up to BP 87(E) at Gebel Fort lies largely <u>west</u> not <u>east</u> of Wadi Taba in alleged contravention of Article 1.

I shall not go into further detail to show how wrong Israel's analysis is. The only map Mr. Walden referred to in an attempt to support Israel's incorrect position as to the northern extension of Wadi Taba is, amazingly enough, Owen's rough map. This map appears as No. 3 in your map folder, Mr. President, and we are going to put an enlargement of it up here for you. This is exactly what you have as No. 3 in your folder. That's Owen's rough map, and here it is. It has, as the Tribunal can readily see, just about [PVR 22] every feature is misplaced on this sketch. If you compare it with any other map, Mr. President, you will find everything is misplaced. Its true significance, and

that's what Owen thought to indicate, what he wanted to be indicated on this sketch, [was] that the terminus of the boundary lay along the east cliffs. That was his main interest, to show the east cliff, and to indicate that the border line ends there. But, if we take any of the names indicated here they will fit nowhere with any other map. This rough map is referred to in Owen's letter to Lord Cromer of 3 June 1906 (that's Annex 23 of the Egyptian Memorial), in which he describes the boundary line he proposed to the Turkish Commissioners on 3 June 1906, in the following terms, and I read from Owen's letter to Lord Cromer:

> "... the boundary line should commence on the Gulf of Akaba at Ras Taba, that is at the point where the ridge ... in a north-westerly direction up to a certain fixed point, thence north-east, south of Gebel Ibrahim to Mufrak, the head of the pass and edge of plateau, thence in as nearly [as] straight [a] line as possible to a point on the straight line from Marashash to Rafa."

So that's what he was indicating, only this. But for the location of the graphical features, he was not interested. He doesn't say, "I am passing through Gebel Fort or going to Gebel Fathi" or anything. He wanted to say that's the indication, that's what he proposed as the course of the line to the Turkish officers and Commissioners. He added, "I enclose a rough map to show the line we proposed" -- a rough map to indicate "the line we proposed", not the features, not the geographical features. [Tape No. 181]

As you see, the map is only a sketch with no attempt to place features accurately and certainly not Wadi Taba, which [PVR 23] is not referred in the description of the line which lies near the line of cliffs or ridges overlooking Wadi Taba. Only is the southern end of the boundary shown. To attempt to justify Israel's distortion of geography in respect of Wadi Taba on the basis of Owen's sketch map is pure nonsense.

The long and short of it, Mr. President, is that Wadi Taba, as commonly known, ends to the northwest of BP 89 where I have indicated. That's the 105 on the map that you have kindly looked into. The main water-course feeding into it from the north is Wadi Gasairiya. The middle wadi tributary has never borne a name -- no map shows it as having a name. For Israel to identify it as Wadi Taba is an exercise in creative geography worthy of the fiction writers who have given us Ruritania.

Article 1 of the 1906 Agreement, in any event cannot be read as if Wadi Taba extended to Gebel Fort. From its text, the boundary line passes along summits

of mountains or heights from Ras Taba to Gebel Fort. These summits or heights are described as lying east of and overlooking Wadi Taba. How Article 1 was applied is spelled out in Wade's Report at page 65, where he says that on 18 October the Commissioners -- here I am quoting once again from Wade: "descended into Wadi Taba and set up a beacon on its east cliff at a point from which the beacon on Gebel Fort is visible". When they descended in the Wadi, Gebel Fort was already behind them, so when they descended into the Wadi they already had left, a long time ago, Gebel Fort. I quote once again from Wade's Report: "Then two more along the line of east cliffs to Taba and one at the point where they strike the gulf".

There can be only one meaning to this account when read together with Article 1. We know that Gebel Fort became BP 87, after BP 83*bis* was renumbered BP 84 during the final phase when the pillars were installed. This is borne out by Owen's numbering of pillars as well -- Owen's General Report [PVR 24] at page 43 where Gebel Fort is shown as BP 86 before the renumbering -- but it became 87 after the final phase of demarcation. After descending into Wadi Taba, the next beacon from which Gebel Fort could be seen must have been the present location of undisputed BP 89. It will be recalled that BP 88 was a new location not decided to be placed on the boundary until 1981. That was added by common agreement of the two Parties in 1981. The east cliffs of Taba referred to by Wade were clearly the cliffs on which present BP 90 and BP 91(E) were placed. BP 90 is not disputed. 91(E) is the one that Professor Bowett is going to talk about. These are the two placed on these cliffs. Wade's final pillar can only refer to the Parker Pillar.

Thus, Israel's attempt to relocate Wadi Taba is futile. Once the Commission established the beacon at BP 89 from which Gebel Fort, that's BP 87, could be seen, the relevance of wadis or cliffs between them vanished. Israel, however, has argued that the Commissioners placed a beacon between BP 89 and what they call Gebel Fort, which Israel has erroneously renumbered as BP 86(I). Israel's justification of this extra pillar is again based on speculation.

Mr. Walden admitted there was "no precise evidence" -- that's his own words -- "no precise evidence" -- as to where this pillar, which Israel numbers BP 87(I) was located. That is in the transcript at page 30. He said it was: "a reasonable location" -- these are his words -- "a reasonable location" -- and that Israel did not claim a pillar was actually located there but that the boundary must have passed through the location. He then went on to say, and I quote from Mr. Walden at page 30 of his transcript: "It is in fact an extremely logical place

for a Boundary Pillar since it is on a high position commanding a very considerable view downwards. Egypt on the contrary has only two pillars between Gebel Fort and the final pillar". [PVR 25]

The weakness of such an argument is evident. It is also wrong on the facts. Excluding the new BP 88, Egypt counts more than two pillars between Gebel Fort and the final pillar as established in 1906-1907. Egypt counts three pillars. These Egyptian locations are BP 89, BP 90, and BP 91(E) -- three pillars, the final pillar having been at the Parker site.

Mr. President, I am now going to turn to the location of Gebel Fathi Pasha. Maybe you would find it appropriate to have a break now and we can start afresh with this terrible thing about geography.

The President: Well, interesting. But still; we take a coffee break now.

(coffee break)

The President: We continue now please.

Prof. El-Kosheiry: Mr. President, I will have very few words to say with regard to the location of Gebel Fathi Pasha since we have had an opportunity at length to go through that during the first phase of our oral hearing. And I will certainly like here to concentrate on very short, but decisive issues.

Israel's entire case in this respect is based on the place where names of certain locations appeared in Wade's map of 1907 regardless of where the boundary line appeared on that same map. What authority is there for the assertion that a boundary line on a map is entitled to less weight than where a topographical feature is named on a given map? What evidence is there as to who put the boundary line on the map? Is it to be presumed that Wade would have been so careless as to let a clearly erroneous line be placed on the map attached to his Report?

Israel's insistence in the main [part] of this arbitration was on the fact that it is the course of the [PVR 26] boundary line and not the location of pillars that is significant. Yet Israel is prepared now to speculate that the boundary was placed on this map where the pillars were placed, even though Wade allegedly knew that they had wrongly been positioned. That is the only sort of justification for the Israeli interpretation of that map. If this is so, how could the Turks have agreed to this? And if the Turks have disagreed, why has there been no protest emanating from the Turkish side during the following 10 years, i.e., up till the time when they were driven out [to] the

other side of the administrative separating line during the First World War? The answers to these questions were given yesterday by Sir Ian Sinclair and hence I shall not bother you again with the positive and negative evidence so eloquently explained by my colleague.

In fairness to Wade it can be said that his topographical sketch map of 1906 on a scale of 1:100,000 portrayed Gebel Fathi Pasha and Gebel Fort correctly and that the location of the boundary line on his 1907 map is also correct. Israel's whole case regarding the location of these features on Wade's 1907 map is based on the location of place names on this small scale 1:500,000 map. What I'm talking about, Mr. President, you will find on the sketch which was initially presented as Map No. 5 in the Israeli Map. It is under your No. 38. That's the map attached to Wade's Report, but Wade's sketch map is No. 39.

So we have 38, that's the 1907 map, [where] we [have] enlarged the southern part of it where you will find certainly things put in locations which are certainly not correct, though the name Taba is put down. You'll have Ras Taba just adjacent to Gebel Fort. Gebel Rushdi is very close. Gebel Fathi Pasha is very close to them. Mufrak is also very close. So in this sketch, in this enlarged part of Wade's map of 1907, we will find that the names of the locations were not certainly put with a lot of care. If [PVR 27] we compare it with his topographical sketch map of 1906-- that you will find in 39 -- a mere sort of observation will reveal how much the two are different, one from the other. But, what I say counts more is the topographical sketch, because that's where Wade was doing it by himself and, as the name indicates, it is a topographical thing. When the 1907 map attached to his Report was done it was not very keen about putting the places and, if we see the original, which was certainly smaller, it was jammed in a very, very small part of the map. At any rate, we will find that the most reliable, and, from our point of view, authentic map to be relied upon is the authentic map and you will find it as No. 40, in your folder, Mr. President. This is taken from the Turkish map attached to the 1906 Agreement, that I explained before, that is the authentic integral part of the Agreement. All words and text of the Agreement should be understood in [conjunction] with that map. Here you have the places put in accordance with the sketch of Wade of 1906 but certainly not in accordance with the map of 1907. And then we have that Rushdi map which accurately shows the boundary as well as the key geographical features, which is as No. 41 in your folder, Mr. President. Forty-two is Owen's map -- we are here enlarging the southern section -- the original of it you will find it in the Egyptian Rejoinder, it follows page 169, and

enlarging all this I will come to what I consider is by itself sufficient. That's why I am not going into any details.

If you will permit me, Mr. President, I will go through what we put as a composite of the four maps. The Owen map, the Wade map -- we cannot put the sketch because the sketch was pre-demarcation, it has no line, no boundary line. It was just preparing the topographical work for the Commissioners to see where the boundary and the water sources would be -- and [PVR 28] the Rushdi map and the Turkish map attached to the 1906 Agreement. You have this composite under No. 43 of your folder. The amazing thing about them all, including Wade's map of 1907, that Israel relies on, they have almost the same line of frontier: The boundary line, if you compare it on Owen, on Wade, on Rushdi, on the authentic Turkish, they are alike.

To see the difference with the Israeli now-claimed locations, I beg you to go to the following document in your folder which is 44, the last one. Here we tried to indicate, not only what is in yellow, the line as indicated on the original maps, we tried to put on them what Israel indicated on its 1986 map. The red line is in accordance with what Israel is claiming in her last publication of maps, after 1982. You will find for yourself, Mr. President, how these two are different from each other. The yellow one, which was the line of borders as it was put in 1906, as demonstrated by Owen, as demonstrated by Wade in his 1907 map attached to his Report, by Rushdi in 1909, by the Turkish official map attached to the 1906 Agreement forming an integral part of it. All of them are in conformity with the Egyptian line, with the Egyptian line as the actual pillars exist on that line that Egypt is claiming. The Israeli line is totally departing from it on all these maps.

In fact, Mr. President, Article 1 of the 1906 Agreement makes Gebel Fathi the key reference to locate two Boundary Pillars to the east thereof as the Wade diagram showed; we have talked about this in the first part of my speech, about the Wade diagram -- that you will find in your folder under number 28.

BP 86 is, as well as the other pillars -- you have seen them in the pictures in your folder -- as we have seen before. The Israeli locations are all put in total disregard [PVR 29] to Article 1 and to the geometrical wording included therein. Accordingly, Israel is locating BP 85(I) at a different place, far to the west, and mislocating Gebel Fort, which according to Israel now is to be BP 86(I).

I [will] not also [say] much with regard to Gebel Fort because, as I indicated before, Gebel Fort should be on a straight line with the line as determined to

the east of Gebel Fathi, no more than 200 metres to the east of Gebel Fathi and certainly the Israeli location is not at all in conformity with that requirement.

I will pass over all the questions related to the details because we feel strongly that they had been covered sufficiently in our first round of oral hearings and I will come now to the concluding remarks on the Ras el Naqb pillars.

I have in this respect two points to be covered by way of rebuttal of what Israel said in the first round of oral argument.

First, that Israel tries to dodge the important point regarding the evidence produced by Egypt as to the location of the Yugoslav camp and observation post. Mr. Walden's statement in this respect is disingenuous. In the transcript, page 27, he said that Israel has never disputed these locations but he went on to add: "but of course the camp was located along the course of the Armistice Demarcation Line, and as Ambassador Rosenne has shown, the Armistice Demarcation Line is not to be confused with the recognized international boundary". [Tape No. 182]

But this is not the point. The Tribunal certainly recalls that during the first phase of the oral hearings we put on the easel a post-1982 Israeli map, and one of the two Yugoslav Colonels located where the UNEF observation post stood. It lies well inside the line shown on said map as [PVR 30] Israel's position of the boundary line, i.e. that the UNEF Observation Post Number 6, according to Israel, would lie on the Israeli side of the international frontier. Yet it is a fact that Israel refused to permit the UNEF forces on the Israeli side of the international boundary. So the presence of the UNEF observation post is irrefutable evidence against any position of the international boundary west of these locations, which is precisely where Israel now claims the boundary to lie in the Ras el Naqb area.

During the first round of the oral hearings, Israel did not challenge the testimony of the Yugoslav witnesses. In his statement, Mr. Walden concedes that, "Israel has never disputed this location", referring to the UNEF Observation Post Number 6.

The second point, Mr. President, that I would like to emphasize, is the following. Israel reneged on the agreement reached at the working level of the Joint Commission during its technical work in 1981, as to the location of the Boundary Pillars in the Ras el Naqb area, after Israel was unable to reach agreement with Egypt as to the location of Boundary Pillar 91. The Israeli denial is purely technical. It is said that no

agreement was signed concerning these locations, and Mr. Walden observed that the description cards were signed only at a high level.

Egypt does not contest this technical argument. It is true that the description cards in question were not signed. But there was agreement at the technical level. What happened can be read through the lines of Mr. Walden's statement and I would not bother you by going through it, but you can certainly, Mr. President, check it by yourself.

The essence of what Mr. Walden said in this respect is that [Israel] cannot be described as reneging on an agreement. But it certainly constituted a change in the ground rules that governed the Joint Commission's work, under which the presence of original Boundary Pillars was to be accorded [PVR 31] paramount importance as evidence as to [their] location. And it is clear that political considerations had intruded on the scene and reopened the question on the location of the Ras el Naqb pillar locations, so as to bring pressure on Egypt in discussing the location of Boundary Pillar 91.

Mr. President, I hope that we have succeeded in establishing that Israel has no serious evidence to support its locations for Boundary Pillars 84, 85, 86, and 87 in the Ras el Naqb area. What has been submitted to you by Israel in this respect is inconsistent and either fragile or non-existent, factually non-existent. The Israeli arguments are based largely on conjecture, they are totally disproved by the map evidence, as we have seen from these composites of four relevant maps of the initial demarcation period. Above all, they are contradicted by the presence of authentic Boundary Pillars at the Egyptian sites which should be treated as conclusive evidence.

Mr. President, for all the above-stated considerations, the Israeli locations of BP 88, 87, 86, 85, and 84 must be rejected. The evidence entirely supports the Egyptian locations of these Boundary Pillars.

I have no more than two minutes to spend with regard to the other pillars to the north.

With your permission, Mr. President, I want only to say that the written pleadings and what was said during the first round provide in my view an ample basis on which the Tribunal can base it decision as to these pillars. Nevertheless, Mr. Walden's statement included some elements of misinformation that cannot be left without rectification.

The first issue in this respect relates to the straightness of the line in the northern sector. Egypt asserts that the straightness is perfect between Boundary Pillars 3 and 14. The description cards, annexed to the Compromis, prove beyond any doubt, that contrary to Israel's position, the Egyptian location for Boundary Pillar 7 is on the exact straight line [PVR 32] extending to Boundary Pillar 10. Equally, the line is perfectly straight between Boundary Pillars 17 and 27. A minor deviation from straightness does exist only between Boundary Pillars 15, 16, and 17.

The second and last issue relates to the basis on which Israel tries to justify its proposed location for Boundary Pillar 52, which is the presence of certain remnants. In fact, Boundary Pillar 52 is for Israel a place of a trig point, exactly like Boundary Pillars 67(A) and 68(A). Therefore, it is logically necessary to apply, with regard to Boundary Pillar 51(I), the same line of argument that Mr. Walden developed in his statement when explaining why Israel gave up its challenge to the Egyptian locations of Boundary Pillars 67(A) and 68(A). According to the Provisional Verbatim Record of the Hearing on Wednesday, 23 March 1988, Afternoon Session, Mr. Walden is reported at page 31 to have said:

> "As regards Boundary Pillars 67(A) and 68(A), Israel based its initial claim on a survey of the boundary which it had carried out in 1960, but on investigating more closely the findings of that survey, the Survey of Israel discovered that in 1960 it had mistaken trig points for Boundary Pillars. As a result it relinquished its original claim."

Precisely for the same reason, and for the sake of consistency, Israel must relinquish its claim regarding Boundary Pillar 52.

On this final remark I have concluded, Mr. President, and I thank you.

الملحق الثالث ـ الشق (١)

مستخرج من

المضبطة الرسمية لوقائع جلسات هيئة التحكيم

اجتماع يوم ١٦ مارس ١٩٨٨ الجلسة المسائية

مرافعة البروفسور دريك باوت خلال المرحلة الاولى

فيما يتعلق بعلامة الحدود الاخيرة المتنازع عليها رقم ٩١

(الصفحات ١٤٣ ـ ١٨٥)

ANNEX III - (A)

EXTRACTS FROM
THE OFFICIAL VERBATION RECORD
OF
THE ARBITRAL TRIBUNAL'S
HEARING ON 16 MARCH 1988,
AFTERNOON SESSION

ORAL PLEADING OF PROF. DEREK BOWETT
DURING THE FIRST ROUND
WITH REGARD TO THE LAST DISPUTED
BOUNDARY PILLAR NO. 91

(PAGES 143 - 185)

[PVR 1] [Tape No. 36]

The President: Yes, the Hearing continues now. May I now invite Professor Bowett, I believe, yes.

Prof. Bowett: Before I begin can I check whether our instructions on the use of the folders have quite succeeded? The maps are designed to be put in numerical order, starting at number 1 and going on from there. Each day, Mr. President, we will provide the Tribunal with a completely new and up-to-date Table of Contents, so in effect each day you can discard the previous Table of Contents and replace it with the new and up-to-date Table of Contents. The other request which I would make, if I may, Mr. President, is that since I shall be referring to a great many maps, and since we don't want to over-burden this folder, I shall also be relying upon the Egyptian Map Atlas, and I hope that the Members of the Tribunal will have copies of the Egyptian Map Atlas.

The President: There is a problem because we have left them at home. We have got copies of everything but this Atlas. Maybe you can explain how many copies we do have in Geneva. Mr. Reichert? [PVR 2]

The Registrar: The Tribunal presently has available to it the Archive copy and one other, and so four would be a minimum if possible.

Prof. Bowett: Well, we had assumed this would be an indispensable tool for the Arbitrators, and we hadn't reckoned on it being left at home. We can provide another three, but voices behind me indicate that they would like these copies back in due course. If I may hand these over.

The President: We were given extra copies of everything just before so that we could leave our papers at home, but this was not possible to duplicate -- I don't know why. It was not intentional from our side, we didn't know that it was missing until we came here.

Prof. Bowett: Thank you. I understand, Mr. President.

Mr. Lauterpacht: Mr. President, may I just observe that the Atlases which you have appear to be somewhat different from the Atlases which we have. I suspect that yours are photographic copies of the maps, whereas ours are merely Xerox [copies]. Perhaps you could mention that to the [inaudible].

Prof. Bowett: Well, Mr. President, if I may begin, I would like to begin by placing the last three statements in context. By the last three statements I refer to the statements made by Professors Amer, Shehab, and El-Ghoneimy. They were made in a context which is important when we come to consider the details of particular pillars. They were all concerned with the relevance of legal principles, or in the case of war, its irrelevance, and it is a significant feature of Israel's written pleadings that virtually nothing is said about these legal principles. Nothing about the stability of frontiers, nothing about the relevance of State conduct, but an entirely misplaced argument by Israel to exclude evidence of Israel's own conduct because of the technical state of war existing between Egypt and Israel. In short, for Israel the [PVR 3] dispute is solely about facts, but not of course the facts of Israel's own conduct. Now I hope this will alert the Tribunal to the importance of evidence of Israel's own conduct. It is this evidence, evidence of her own conduct, which Israel wants to exclude, and, as we shall see, for very good reasons.

In the next two days we shall be placing before the Tribunal a good deal of evidence of Israel's own conduct, and I would request the Tribunal to scrutinize this evidence very carefully. In our submission two questions ought to be kept in the forefront of the minds of the Tribunal: first: does Israel's conduct show a consistent bona fide belief in the location of these pillars where Israel now claims them to be correctly located? And, second: is Israel's conduct consistent with the legally-binding principle that a recognized international frontier cannot be changed at the will of one Party? That the principle of stability of frontiers requires that markers must not be destroyed, or cut away, or otherwise removed.

Now with that preface, Mr. President, I turn now to the details of the location of Boundary Pillar 91. I have displayed behind me two illustrations; one is

Map 2B from the Egyptian Counter-Memorial, which is number 1 in your folder. That is, of course, blown up here, and it's blown up on the scale of 1:2,100. Then there is the photograph which is No. 8 in your folder. You will see that we have reversed it. Not that Taba has changed position, but we have reversed it simply so that you can better see the mouth of Wadi Taba. I fear that if it was down here, I would obscure your vision.

Now I want to begin by examining methodically, and I hope carefully, Israel's positive case in support of the two Israeli positions for Boundary Pillar 91. The Tribunal will remember that the two positions proposed by Israel, are, one at the western lower end of the Granite Knob and the other is at Bir Taba. But the two positions rest on essentially the same evidence. We have referred in our pleadings to the paucity of this evidence, and I must say that nothing in the [PVR 4] Rejoinder of Israel has caused Egypt to place the proof offered by Israel at any higher level. The evidence remains weak and insubstantial. It consists in effect of seven somewhat flimsy arguments. These are:

1. the intervisibility argument;

2. the alleged frontier cairn on the beach as shown in a photograph of 1936;

3. the Meistermann photograph of 1909;

4. the Egyptian Statistical Yearbook of 1909;

5. the alleged Turkish gun in Wadi Taba in 1913;

6. maps; and

7. a strategic argument, if I may call it so.

Now, Mr. President, I will take those one by one and I begin with the argument of intervisibility.

The argument of intervisibility is the core, the very heart, of Israel's case against Boundary Pillar 91(E). It is also the rationale, the justification, behind Israel's selection of their two locations for the same Boundary Pillar 91. Remember that at the Granite Knob they have chosen, not the top of the Granite Knob, but a point of no obvious significance at the western extremity precisely because only there, and not from the top, do you achieve intervisibility with Boundary Pillar 90. The Israeli argument really depends on turning the reference to intervisibility found in Article 3 of the 1906 Agreement into an absolute requirement and, moreover, then assuming that intervisibility existed in 1922 at the critical date. Now since this is a crucial point in the Israeli case,

we have to go through the pieces of evidence they offer very carefully. And I'm afraid it will tax your patience somewhat but that is not a problem of my making.

I start with the first piece of evidence which is the 1906 Agreement, but I have a caveat to make -- I am treating the 1906 Agreement as the premise from which Israel starts. [PVR 5] The Tribunal will recall, as Professor Abi-Saab carefully demonstrated, that it is not Egypt's case that the legal basis of this frontier is the 1906 Agreement. I take this Agreement simply because that is Israel's own premise. Now if we turn to the text of the 1906 Agreement; if you take the text as annexed to Owen's Report, it says this: "Boundary Pillars will be erected, in the presence of the Joint Commission, at intervisible points along the separating line, from the point of the Mediterranean shore to the point on the shore on the Gulf of Akaba." Let me make a number of points about that clause in the Agreement.

First, the Tribunal will remember that this clause was agreed on 1 October 1906, that is before, <u>before</u> the demarcation began -- demarcation began only on 6 October, five days later. So what we have here in the treaty is an aim -- the treaty expresses an aim of intervisibility. The people negotiating this treaty simply did not know on 1 October whether this aim of intervisibility could in practice be achieved on the ground. They simply did not know.

The second point I make is this. As we have described in our Counter-Memorial, at paragraphs 6.19 to 6.23, if you look at the successive English texts of the provision, in the second draft the word "all" was omitted. The first draft referred to intervisible points <u>all along</u>, all along the separating line. The second draft dropped the word "all" and simply said "at intervisible points along" the separating line.

I will now make a third point: the 1906 Agreement, Article 1, treats two sectors of the separting line really quite differently. There is a first sector, the sector from Ras Taba up to Jebel Fort which is described, the line is described, in geographical terms -- remember the phrase "passing by the summits of the mountains lying east of and overlooking Wadi Taba" -- that is a geographical description. The second sector from Jebel Fort northwards consists in the treaty of a series of straight lines from specified points, [PVR 6] and of course you will see that this is a different kind of description of the line in the second sector. Here in the second sector, dealing with straight lines between specified points, you may well want to achieve intervisibility. But the requirement of intervisibility in the first sector, where you had a

clear geographical description, was absolutely minimal. Now why should this be so? Well precisely, Mr. President, because the features described in the treaty itself, the summits or heights of the mountains, cliffs, or ridges -- whatever you call them -- they were the agreed boundaries; they were the crucial markers of the boundary and these summits or heights or mountains were clearly visible as you proceeded along the Wadi. The only need for a Boundary Pillar arose at those points where there might have been some doubt, some uncertainty, about the direction taken by the ridge of mountains. But if the line taken by the ridge of mountains was absolutely clear there was no need for Boundary Pillars, and indeed, it is clear, as we shall see when we look at Wade's Report, that in this sector between Jebel Fort and Ras Taba it was the treaty text which governed, not intervisibility. Indeed, I may add that even in the sector to the north where intervisibility was clearly much more desirable, and the use of straight lines across the desert called for greater reliance on Boundary Pillars and intervisibility, even there, intervisibility was not invariably achieved. Egypt can show that there was no intervisibility between Boundary Pillars 1 and 2, that is precisely why we had to have a "2A" Pillar; there was no intervisibility between 5 and 6 or between 35 and 36 or between 76 and 77; and indeed, the agreed location, the now agreed location for Boundary Pillar 13 is not intervisible with Israel's location for Boundary Pillar 14. And nor is Israel's Boundary Pillar 15 visible from Israel's Boundary Pillar 14. So even in that sector there is no absolute adherence to intervisibility. Moreover, whatever the terrain was in 1906, the people who [PVR 7] drafted this treaty and the people who demarcated the boundaries, they were not fools, they knew the desert, they knew that even if intervisibility could be achieved in 1906, it could not be guaranteed to endure, because of the shifting of the sand dunes, of the growth of vegetation -- you will see this point brought out in Commander Beazley's report. [Tape No.37] Because of accidents like that, visibility might well be lost at some future time, even if originally achieved. How, therefore, Mr. President, could intervisibility ever be regarded as a fundamental, absolute, and enduring requirement?

I leave the text of the treaty and I turn now to the demarcation process, the second piece of evidence, and I begin with Wade's Report and his description of the survey, Wade's survey, in the months of May to June 1906. The date is important. The survey was prior to the agreement on the treaty text. It was before Wade knew, or anyone knew, where the boundary line would eventually be agreed. Now, if you look at the Wade Report in detail, a number of points emerge absolutely clearly. The first is that Wade was concerned with intervisibility between astronomical

points, astronomical points. He needed that because he was trying to prepare a reasonably accurate map -- a working map -- of the area over which the boundary line in the future might be agreed. And you remember that Wade began at Taba -- here -- and at Taba he placed one astronomical point -- A.1. He then moved over to A.2 near Aqaba. Now why? Because he couldn't see very much up here. He knew the boundary was going to run in this direction and he knew the crucial feature on which he had to tie the rest of his map was up here, Ras el Radadi at A.3. He couldn't see it. So he starts at A.1 in Taba, moves over to A.2 near Aqaba where he can see A.3. But there is a problem because he can't now actually see A.1. So he has to put in a [PVR 8] new astronomical point, B.1, on the top of the Granite Knob which he can see. Now the importance of this is that the sequence is A.1, A.2, A.3. Wade was not in the least concerned about intervisibility with Boundary Pillar 90. He didn't know anything about Boundary Pillar 90. Boundary Pillar 90 didn't even exist. In fact, as we shall see, Wade was assuming that the boundary would run from Marashash, here, not Taba, so Wade wasn't thinking about a boundary running up Wadi Taba. Boundary Pillar 90 was not remotely in his contemplation.

Now this is quite clear if you look at the record. Listen to what Wade says at page 6 of his Report:

> "Keeling ... was able to select points lying for the most part near the straight line joining the north corner of the Gulf of Akaba and Rafa, which had been agreed on in the course of the negotiations, as the approximate frontier."

If you look at his journal for 1 June, he refers to the "provisional boundary, viz. a straight line from Marashash ... to El Rafa", so he's thinking about a boundary there, not at Wadi Taba. He doesn't even know the boundary is going to be anywhere near Wadi Taba at that point in time. So it's clear then as far as Wade was concerned intervisibility between B.1, A.1 or anywhere else in Taba and B 90 simply was not in contemplation. It can be dismissed.

Then we come to the agreement on the text on 1 October 1906. I have discussed that. You remember that five days later on 6 October begins the first attempt to establish the provisional markers, the telegraph posts, and Wade, the surveyor, accompanies the Joint Commissioners -- Egyptian and Turkish -- to erect these provisional markers, the telegraph poles, which are ultimately to be replaced by the masonry Boundary Pillars. If you read his Report, Wade describes how there were considerable difficulties in securing intervisibility between the stretch Rafah to Ras el Radadi, between Rafah and A.3. But no

question, there is over this stretch frequent mention of intervisibility -- [PVR 9] intervisibility is of real concern. Then he comes to Ras el Radadi. That's A.3. And from there on, from this point, Ras el Radadi, right down to Taba, he mentions intervisibility only once again.

If you look at his journal for 18 October, this is what he says:

> "In the morning we found [the] post -- [he's referring to Turkish post at Mofrak] -- we found [the] post vacated. Descended into Wadi Taba and set up a beacon on its east cliff at a point from which the beacon on Gebel 'Fort' is visible."

And that is the now undisputed 89. That is the last time he mentions intervisibility. He then goes on:

> "... then two more along the line of east cliffs of Taba and one at the point where they strike the gulf, and the work was complete."

In other words, Wade makes no mention of intervisibility between the last three of his pillars. Now the clear implication is that not only he but the Commissioners along this stretch regarded the text of the treaty as the governing criterion and not this test of intervisibility. Now you will remember also that Wade says there was some sense of urgency. He talks about at page 52: "the desirability of bringing the whole business to a conclusion, [and so] movements were extremely rapid." And then he says, at page 53 of his Report, confirming that rather brief journal note which I have already read to you, he says this:

> "Bivouacking under the slopes of Um Quf we made the summit early next morning and the remainder of the operations as far as Thamelet el Radadi call for no comment; the summits to be beaconed were within easy distance of one another and visible throughout, so that the selection of intervening points in the plain required practically no technical help."

And then he goes on:

> "We found the caravan at the Mufraq and next morning started on the operations between Thamelet el Radadi and the sea."

[PVR 10] Now this is the crucial sector where he's going to come down towards Taba.

> "These are of a quite different character from the preceeding."

So he emphasizes the difference in the two sectors. He continues:

> "and the text of the treaty must be carefully studied to appreciate them, but they presented no difficulty. By the afternoon there was nothing left to do but to place the beacons on the eastern margin of Wadi Taba. The technical part of my work was finished as the treaty describes the position of these beacons in such a way that trained assistance was unnecessary." (emphasis added)

Then he goes on to say:

> "A delay here occurred for a whole day as by an oversight the Turkish depot at the Mufraq had not yet received orders to vacate that station, which was now in Egyptian territory. Next morning they left and we descended into Wadi Taba. I [this is Wade] accompanied the Commissioners and assisted them generally, but as explained, no technical assistance or instrumental work was required."

And then he describes how at sunset they got to the last point on Ras Taba and then they got aboard their boat and with relief they went home.

Later in describing this crucial area between Jebel Fort and the sea, page 56 of his Report, he says: "The remaining beacons were erected at suitable points ..." Note the word "suitable". He did not say intervisible points -- he said "suitable" points-- "... on the east cliffs of Wadi Taba, and at the point where they strike the Gulf of Aqaba. They were chosen by the Commissioners and technical assistance was not necessary."

Now from Wade's Report there are, in my submission, three clear conclusions: (1) the last time he mentions intervisibility is between Jebel Fort and the next pillar -- the pillar that is now agreed 89. After that there is no further mention of intervisibility. The second point is that after that point, the positions of the remaining beacons were chosen by the Commissioners themselves, not by the surveyors -- by the Commissioners. And the third conclusion [PVR 11] is that no technical work was required; there was no need for any theodolites and there was no need for intervisibility. Indeed, the implication is that the Commissioners moved along the bed of the Wadi Taba, descending down into the bed, and

as they moved along the Wadi, heading towards home, or at least their ship, they selected points which they could see up on the cliffs, on the summits of the cliffs to their east, to the left, overlooking Wadi Taba. Now there is no suggestion that they actually went along the top of those ridges -- they were not mountaineers -- they were ordinary people, no doubt some of them rather portly, and it would have been quite impossible for them to have gone up and down these mountainous ridges checking back, looking back, to see whether there was intervisibility from one ridge to another. Indeed, the clear implication is that in this section they weren't even bothered about intervisibility. They regarded the peaks of the cliffs on the ridge as natural beacons; why therefore erect artificial beacons when you have these massive natural beacons overlooking the Wadi? What would be the point in erecting small masonry pimples on the top of these massive mountainous ridges when you had these huge natural cliffs as clear natural markers of the frontier? It's rather like trying to mark the Eiffel Tower by putting on the top of it a small angle iron. And you may ask yourself, well, how many would they have had to erect if they had wanted to achieve strict intervisibility? Well, I'm no surveyor, Mr. President, and I won't make the mistakes which others might have made. If you take the Israeli diagram on intervisibility -- you recall the diagram which is Figure No. 4 in the Israeli Memorial -- it's that, perhaps I ought to come a little nearer show it to you. If you take that diagram and then see how many more pillars you would need to achieve intervisibility, the answer is certainly three and maybe four more.[PVR 12]

Now we saw on the opening day of the Hearing a film prepared by Israel and I think it may be useful, even at this early stage, to make three comments on that film. One of the suggestions in the narrative attached to the film was that Egypt's top of the ridge leading towards BP 91(E) was not the actual summit because behind these cliffs, these mountains, there were even higher mountains. Of course, Mr. President, but what mattered was what the Commissioners could see from the bottom of the Wadi as they walked along the bottom of the Wadi. As you know yourself that walking in the mountains you always see what you think is the summit and then when you get up there you find that there is another one further back. But for the Commissioners what mattered was the summits as they appeared as they walked along the bottom of the Wadi. The fact that there are higher mountains behind is really quite irrelevant. Moreover, the Tribunal will realize that there are two other Boundary Pillars nearby -- BP 89 and BP 90 -- which are accepted by Israel. Israel doesn't challenge those locations, but those two pillars are not on the highest mountains, on the highest ridges, so why is it that Israel can accept

89 and 90 but not accept 91(E) simply because it is not on the highest mountains lying behind the Wadi?

Then there's a second point which emerges from the commentary. It was suggested that the line of cliffs, the line of mountains was not continuous -- it was broken by Wadi Khadra and even another smaller wadi near to the mouth of Wadi Taba. [Tape No.38]
Mr. President, if you look at Wadi Taba as a whole, on the scale of the whole Wadi, these smaller wadis running into it from the east, are really very small, very insignificant, features and it's clear that they did not impress Wade at all. Wade makes no mention of these other [PVR 13] wadis coming in, as though they have some importance. As small, insignificant features, they do not break the essential continuity of the ridge as it goes towards the sea.

The third comment I'd make on the film is this. You may remember that we were constantly told that the Granite Knob was the prominent feature. Well, Mr. President, if it was so prominent why didn't Wade mention it? If it has so big a role, visually, in Wadi Taba why is there no mention of it in these reports? Moreover, the Tribunal must remember another thing. Israel's Boundary Pillar location is not on the top of the Granite Knob. It's down at the bottom of the Granite Knob, at a place of no significance at all. Except of course that it can be seen from Boundary Pillar 90. That's its only virtue.

Now, leaving Wade, I want to say a few words about the companion Report, which is Owen's General Report, because in essentials, with one discrepancy, what Owen says confirms exactly what Wade has said.

In June, that is prior to the Agreement on the text, Owen as you know also took part in a survey on a straight line from Marashash to Rafah. So they're going there. From Marashash to Rafah. They still don't know the boundary's going to be down here. Of course, they're reconnoitering up to a radius of some 10 miles on either side of this line so as to familiarize themselves with the terrain. So he had seen the terrain, took part in the negotiations, the text was agreed on 1 October, and then he, too, Owen, takes part in the provisional demarcation, the erection of the telegraph poles, starting from Rafah. Now he says "ninety intervisible pillars" were erected. He has one pillar less than Wade referred to. That's the only real discrepancy. Was he right or was Wade? We really can't be sure. But certainly if he made a mistake over the number, he could also have made a mistake about intervisibility. And, of course, Owen was not the technical surveyor that Wade was. What is quite certain, [PVR 14] is that there's no hint in the Report that Owen did what the other clearly did not,

and himself went up on that ridge to check on intervisibility by looking back from one pillar to another. He also says, and this is absolutely clear in his mind, that "we secured the whole of Wadi Taba." And that statement is totally incompatible with either of the two proposed Israeli lines which run down the bottom of Wadi Taba and in effect divide Wadi Taba. It is inconceivable, if you look at Owen's part in the negotiations, that he would have left the Turks in possession of any part of Wadi Taba.

So, Mr. President, I suggest to you that if you look at the treaty and the evidence of the demarcation, what we had in intervisibility was merely an aim, not always achieved and certainly never regarded as an absolute requirement by the Demarcation Commission. Moreover, I make a second point. Demarcation Commissions are given in the nature of their tasks a certain latitude. To take a treaty text and from the treaty text, which may be very general, to arrive at a sensible, practical line on the ground. They have that margin of discretion in the nature of their task and provided they were faithful to the treaty text in the description of the line between Jebel Fort and Ras Taba, I would have no doubt that they would not have regarded the condition of intervisibility either as mandatory or even as practical.

In any event, even if Israel were right, which we do not concede, but let us suppose for the sake of argument that Israel was right and the 1906 Treaty actually imposed an absolute condition of intervisibility. Suppose that were so. The fact is that if the two sides in the demarcation agreed to disregard intervisibility over part of the boundary; and if thereafter the two sides accepted the agreed pillar locations -- despite the lack of intervisibility; and if thereafter subsequent powers or States occupying the territory both to the south and west, Egypt, [PVR 15] or to the north and east, Great Britain as mandatory power, then Israel; if they accepted the pillar locations despite the fact that they did not conform to the requirement of intervisibility; if that were so, then the condition of intervisibility would have been rejected in the practice of the States concerned and it would no longer be a legal requirement to which either Party in this arbitration could lay claim. In other words, the agreed practice of the Parties would prevail over the literal interpretation of the treaty text for precisely the reasons which were explained so clearly to you by Professor Georges Abi-Saab. So that, Mr. President, is all I need say, at least at this stage, about intervisibility.

I come now to the second of the strands which we are offered in justification of Israel's locations. I refer to the frontier cairn at Ras Taba. In your

folders at No. 9 you will find a photograph or copy of a photograph, it is the photograph which is to be found after page 15 in Israel's Rejoinder. No. 9 in your folder, it has got "65. Egyptian frontier post at Taba". Now if you look in the centre of the photograph slightly towards the left, and you may need your magnifying glasses for this, you will see what appears to be a pile of stones with something white upon it, it might be a paint mark, it might be somebody's washing out to dry, and it is suggested that this is a cairn, this is a frontier cairn marking the frontier. Now, Mr. President, we find that a quite extraordinary assertion and it raises a number of questions.

First of all, what height does the Tribunal think this cairn is? Have a look at the car. There is a motor car parked somewhere along side, roughly about level with the cairn. Now judging by the height of the wheels of that car it looks as though that cairn is between two and three feet in height. You will remember that the Boundary Pillars, as we were told by Shoucair, were six to eight feet in height, so if that is a [PVR 16] boundary cairn, it has lost a great deal off the top of it.

Secondly, if this is a boundary cairn, is it really suggested that that would be visible from Boundary Pillar 90? Would that satisfy the condition of intervisibility from Boundary Pillar 90? I suggest not, not unless you had the kind of binoculars which Israel has recently put on the beach, and perhaps not even then.

Thirdly, I want you to look at the Matson photograph of 1934 (now this is the photograph reproduced in Israel's Rejoinder as Annex No. 118 and it is up here behind me). If you look just below the rest house -- here -- you will see a number of objects, black objects, on the ground. Not one, not one cairn, but it looks like perhaps three objects, they are maybe discarded motor tyres, fishing traps, who knows, but I suggest to you not a boundary cairn. You will also see that coming down beyond these objects is a kind of a path leading to a small jetty; so presumably a boat will be moored there from time to time and maybe these objects had something to do with the boat; they could be fishing traps, but not a boundary cairn by any stretch of the imagination.

Moreover, if there was a boundary cairn on the beach as Israel suggests, how odd it is that nobody seemed to have noticed it. You will remember the record of Miss Plowden's journey along this stretch, that much maligned lady who in January 1937 came along this coast. Now what Miss Plowden said is this: "There was nothing on the beach to indicate the exact moment when we crossed into Palestine". She clearly either

didn't see this pile of stones or would never have thought they constituted a boundary, a Boundary Pillar. The only Boundary Pillar that she noticed was a cairn on the summit of a high hill. She says she went "round the base of a high hill upon whose summit a cairn marks the frontier" and that is certainly not this pile of stones on the beach. Of course it is true that Israel rather pokes fun at poor old Miss Plowden, producing [PVR 17] her sketch, (this is the sketch in Israel's Rejoinder at page 51), and clearly she has made a mistake because she has got confused between the Wadis, and she has got Wadi Taba really where Wadi el Masri ought to be. You must remember of course that it appears she didn't go up into the hills, she just went along the coast, so maybe this is why she got confused. But the important thing about her sketch is that the only cairn, the only boundary cairn, she observed was to the east of Wadi Taba and to the east of Ras el Masri and it was on the top of a high hill exactly where Boundary Pillar 91(E) is located.

Or take the evidence of Beadnell, who passed along here from 1921 to 1926. He makes no mention of any boundary cairn on the beach.

Or look at the photographs, the Zakai photographs produced by Israel, these are photographs taken in 1949 and you will find them at No. 10 in your folder. I think actually to see it properly, Mr. President, you have to take it out of the sleeve because it is rather a long one. No. 10 in the folder. Now this shows the same stretch of beach. It is not a very good reproduction but you will see the Granite Knob, you will see the boats pulled up on the beach, in front of the Granite Knob, you will see the rest house, but no sign of a pillar. And so, Mr. President, I suggest to you that if you look at the evidence and apply a little common sense, this fiction of a cairn on the beach being a Boundary Pillar can be summarily dismissed.

I turn now to the third strand of the Israeli argument, which is the Meistermann photograph, and this you will find at No. 11 in your folder. The Meistermann photograph, reproduced from his book <u>Guide du Nil au Jourdain</u> en 1909, and at the top of page 190 in his book, he has a description of the route as he moves northwards up the coast. He says

> "On laisse à gauche l'ouadi Mezarik, puis on arrive au ouadi Tabah (15 min.), qui possède un puits d'eau saumâtre entouré de quelques palmiers doums, et une citerne en bonne maçonnerie. Cet [PVR 18] endroit acquit une certaine notoriété en 1906. Les troupes turques l'avaient occupé, malgrè les protestations des Anglais; définitivement il est resté dans le territoire

> egyptien" -- then he goes on -- "Mais en deça de l'oasis passe la nouvelle frontière de l'empire ottoman, sur laquelle veille un poste de soldats turcs, casernés dans un petit fort. La route fléchit vers l'est et contourne un petit cap, Ras el Masri".

[Tape No.39] Now I would like the Tribunal to look at this photograph again with some care. What appears there is rather a large building. Just count up the number of windows, there are at least nine windows in view. That really is a very large building for what was then a very small frontier post. It's too large really to fit the sort of descriptions we have of what was there in 1909. You see that the roof of the building is flat and is not crenellated, it's not jagged. It is also a building clearly surrounded by palm trees. The palm trees are there, and no one has suggested that there were palm trees near the Granite Knob. The only palm trees that were in Wadi Taba were around the wells in the area which Israel concedes to be, then and now, Egyptian territory. So what were these Turkish soldiers doing there? How could that be a Turkish post? I think there are two possible conclusions. Either Meistermann made a mistake in the sense that if this was a photograph of Wadi Taba he [PVR 19] simply did not know the difference between a Turkish soldier and an Egyptian soldier. They would be dressed the same, no doubt their language sounded to him very much like the same, and he simply mistook Egyptians for Turks. He assumed it was an Turkish fort. It was not; it was an Egyptian fort. Alternatively, and this cannot be dismissed because of the size of the building he portrays, he may have got his photographs mixed up. When he got back to put the whole book together he just got the wrong photograph. But in any event we would say that is not really an acceptable evidentiary basis on which to assume that the Turks were in a fort in Wadi Taba in 1909.

Now, if Meistermann was wrong we can equally as easily dismiss the supplementary evidence, the auxiliary evidence, which Israel finds in the book by Baedecker. You remember that in Baedecker's 4th edition, of Palestine et Syrie -- this in the year 1912, so it is three years after Meistermann-- Baedecker, after identifying Faroun Island, goes on to say:

> "L'Ouadi Taba où est une source d'eau salée, entourée de palmiers doum; à coté, une citerne maçonnée en pierre rouge. Aussitôt après, on franchit la frontière turco-egyptienne (postes militaires turcs). On contourne en 1 heure le cap Ras-el Masri formé de roche noirâtre."

Now, I suggest to you Mr. President, that Baedecker had with him, or had certainly consulted the book by Meistermann, published three years earlier. And what he was doing was simply reproducing, in his own words, what he found in Meistermann's book. It's the same process of perpetuating a mistake which you find in mapmaking. Where one mapmaker copies a previous map and simply takes over the mistakes in the earlier map. And that I suggest to you is exactly what happened with Baedecker.

Mr. President, I wonder whether that might be an appropriate point at which to allow you to take a break. [PVR 20]

The President: All right.

(tea break)

The President: Mr. Bowett, are you ready? Please.

Prof. Bowett: Thank you, Sir. Mr. President, I now turn to the fourth element in the Israeli positive argument for their two positions. This is the citation from the Egyptian Statistical Yearbook of 1909. And it is this publication that Israel finds of striking importance. And of course that is because the description of the frontier in that publication refers to the terminal point of the frontier at Taba, and then, in a parenthesis, says: "lat. 29 degrees, 29 minutes, 12 seconds North and longitude 34 degrees, 55 minutes, 05 seconds East, granite knob on the shore."

Now, Egypt concedes that this is an error made by the Statistical Department of the Ministry of Finance who were the publishers of this Yearbook. It's not the only one. There is another mistake in the Agreement, being dated 1905, when of course, it was 1906. It's also rather strange that in giving the terminal point of the boundary on the other end, they give "Rafa" -- but not the actual terminal point. Presumably, the official compiling this information was a statistician, not a geographer and not a surveyor, but just a statistician. And in giving this information he made the mistake of most statisticians and tried to be too exact with his statistics. Looking for precision, exactness in statistics, he found, or thought he'd found, such precision in Wade's Report. Where Wade describes the Astronomical Point B.1 with those coordinates and so the statistician assumed that that was the terminal point. Of course, not knowing any better, he failed to realise that BP 91 was not on the same location as the Granite Knob. And indeed, no precise coordinates had been given in any of the 1906 documents for BP 91. So he was looking for a precision which just didn't exist and not understanding, he

picked what he thought was a precision -- but it was the wrong one. He picked the precision of B.1, the Astronomical Point listed by Wade. Now the error didn't last very long. It was rectified [PVR 21] in the following year, 1910, and the Statistical Yearbook for 1910 contains a new headnote -- and this time the headnote reads "Notes rédigées par le Service d'Arpentage". So, unlike the previous Yearbook, which was compiled by some statistician in the Finance Department, this time it was drafted by the Survey Department -- people who actually know what they are talking about, or generally do. Obviously, these people had the necessary technical knowledge which their colleagues in Statistics did not. They knew that the astronomical point need have no necessary coincidence with the frontier. They knew that B.1 was not listed as the location of a Boundary Pillar in Article 1 of the 1906 Agreement. They also knew that the coordinates of B.1 would place it on the Granite Knob and would not place it in the correct location up on the east ridge overlooking Wadi Taba. And so they corrected the description to read quite simply, because they still didn't have coordinates, "à un autre point près de Taba au fond du golfe d'Akaba". That's all. And the Yearbooks for subsequent years maintained this rather general description but did not again commit this error, which appeared only once in 1909. So that piece of evidence is, I would submit, not terribly impressive.

Then we come to the fifth strand, which is even less impressive, and this is the evidence of the Turkish gun in Wadi Taba. As you have already heard from Sir Ian Sinclair, in the Rejoinder of Israel, pages 14 to 15, Israel produces an extract from the Sudan Intelligence Report of April 1913 and what is there is a single, isolated record of a rumour. A rumour which was never substantiated -- we have no other document. Certainly not in our possession and we have looked. We have no other document which gives any credence, any substance to this rumour about a Turkish gun in Taba. If there had been a Turkish gun in Taba you could have been quite sure there would have been the most almighty protest. But there is none. It is not a very likely site for a gun -- if you think of [PVR 22] it -- down in the Wadi. It is not where artillery men usually site a gun. And, of course, the other strange thing is that we do know in 1914 Egypt established a frontier post in the Wadi. That is very strange. Because you must visualize the Egyptian frontier post staring into the mouth of this Turkish gun. It is not a very likely scenario. And we would suggest to you, Mr. President, that the gun simply never existed in the Wadi.

Then, sixthly, I turn to maps. And as you will have seen from the written pleadings, Israel has used a

number of maps to support the Israeli positive case--the Israeli attempt to locate Boundary Pillar 91 at one or the other of the two Israeli locations down in the Wadi. I won't at this stage deal with maps which Israel has introduced to try to counter the Egyptian case. I confine myself here simply to those maps which Israel suggests supports the Israeli case.

Now, may I just ask you to bear in mind that this area was not surveyed until 1913-14. So the maps prior to 1913-14 are, in my submission, all of them suspect and likely to contain inaccuracies. They cannot be relied upon. Mr. President, I will go through these maps one by one, because they deserve careful scrutiny.

The first of the maps is Owen's Map (No. 6), you have it at No. 12 of your folder. This of course is the version of the map attached to Owen's Report and I think you will find that the relevant section of that map is face up in your folder. You will again, I suggest, need a magnifying glass to try to follow the Israeli argument. The map is clearly, in my view, so small, on so small a scale, that it is almost useless for the kind of precision which we need to locate Boundary Pillar 91. I would suggest to you that it's by no means clear that the line there depicted terminates at astronomical point B.1. You see the point marked--I say it is by no means clear that the line terminates at that point. In any event, first B.1 was not used as the location for a Boundary Pillar on this boundary. [PVR 23] That we know because B.1 is not one of the astronomical points listed in the 1906 Agreement as constituting the location of a Boundary Pillar. Other astronomical points were listed but not B.1. So even if this does meet B.1, it really does not help Israel, because B.1 was not treated as a boundary point, the location of a Boundary Pillar under the 1906 Agreement.

Secondly, we have got the evidence of the Parker photograph, and that is certainly contrary to any suggestion that the terminal point of the boundary was on the Granite Knob.

Thirdly, there is the awkwardness for Israel that, of course, Israel's location for her pillar is not the same as B.1. Because B.1 is on the top of the Granite Knob. Israel's location is on that rather insignificant lower western end just in order to achieve intervisibility.

Fourthly, of course, on a map of this scale, 1:500,000, I am told that one millimetre is equivalent to 500 metres on the ground. So if you get a line which ends at the outer edge of the triangle, if the triangle centre was [B.1], which is what the map really depicts, then that line will be some 500 metres at least to the east. Well away from the position of the

line for which Israel contends. Now, of course, I have to concede, it is also Israel's argument that the line touches the triangle at the apex and not at the edge. That may be true, but if you follow the direction of the line it will actually pass along the right hand edge of this little triangle. So that the actual course of the line will not run through the middle of the triangle, but pass along the extreme edge, the right-hand edge of the triangle. But really much more important than all that is to look at Owen's sketch map -- Map No. 4 from the Egyptian Memorial -- it is No. 3 in your folder -- so you have to turn back somewhat earlier in your folder and it is the map which is blown up here behind me on the board. [PVR 24] [Tape No.40]

Now, this is Owen's Sketch Map. Look at the direction of this line. The line clearly runs along the ridge of hills. On that sketch it can't conceivably be a line terminating at the Granite Knob. It terminates at Ras Taba where the cliffs, where the hills, reach the sea. Now, if the sketch is right-- and the sketch is on a much larger scale, much more helpful than this small map -- I would suggest to the Tribunal that it really must assume that Owen's map and sketch ought to correspond and the sketch is the reliable evidence and not the map.

Now then I turn to Wade's map, which is No. 14 in your folder. The same comments have to be made on this map. It is really so small as to be almost useless in the present exercise and it is clear that Wade's map shows A.1 and not B.1. So it fits even less well with the Israeli thesis. Really for two reasons. One is that A.1 was certainly not intervisible with BP 90, so if they are relying on A.1 the intervisibility argument is lost, it's abandoned. Now the Tribunal will remember that A.1 is broadly the site of the hotel, where the hotel now is. B.1 is the top of the Granite Knob. And the two are something like a hundred metres apart. Now there is no question that this triangle on Wade's map is A.1 and not B.1. That is reinforced by Wade's survey map which is No. 13 in your folder. That's the previous illustration. And there, if you look right down at the bottom on Wade's survey map, you will see that he marks on the triangle A.1, not B.1. So it's clear that Wade's map [PVR 25] and the triangle there shown is also A.1 not B.1. And that's no use to Israel at all because there is no intervisibility between A.1 and BP 90.

Then I turn to the next map on which Israel relies, which is the so-called Rushdi map. It's No. 15 in your folder. This is, of course, rather a rough sketch and quite contrary to the Israeli position. If you look at Rushdi's sketch, you'll see that his line comes down the line of the hills towards the coast and passes well to the east of the astronomical point.

Well to the east. So that line could not conceivably end at the Granite Knob. It's actually contrary to the Israeli position.

Then we come to the two Turkish military maps, made in 1909. These you have at No. 16 in your folder, there on the reverse side of the illustration, of the sleeve. Again you see they really are not only very rough sketches, but they are on such a small scale that they scarcely offer any guidance at all. Of course it's true that they do show the line meeting the triangle. But if the triangle is A.1, as I said already, that doesn't help Israel in the least because the Israeli position is not A.1. It's not even B.1, but it's further to the west than B.1 and there is no intervisibility. So that map doesn't help Israel either.

Then we turn to the British War Office map of 1907, which is No. 17 in your folder. No. 17. Again I think the reason why Israel finds this map helpful to the Israeli position is that the line, the frontier line, appears to end next to the triangle. Now there are a number of comments to be made on this map. The first is that it is not only on a very small scale but it's also very unclear and, indeed, if you look at the legend -- the little printed statement over on the right-hand side in the middle of the page, you will see that the legend there says expressly that this map is not reliable. Moreover, insofar as the line does meet a [PVR 26] triangle, that triangle is A.1 and not B.1. It doesn't help Israel at all to establish the position on the Granite Knob.

Then we come to the Turkish/German General Staff maps of 1916. These are in your folder at No. 18. And I think the one you want is on the left-hand side... You'll see that on the sleeve at No. 16 on the right there are three maps. What we need to look at are the two on the extreme left and in the centre. Those are the Turkish/German General Staff maps -- on so small a scale as to be virtually useless, at least for our purposes. And again, they don't in the least help Israel because if the line does terminate at an astronomical point, that is termination at A.1, which means no intervisibility. It is not the Granite Knob nor even the other location at Bir Taba, and the map simply does not assist the Israeli argument at all.

Then I turn to the Shocair map of 1913 which is on No. 18 -- that's the one we are now looking at -- and it's the one on the extreme right. It's the same sheet. No. 18. That is the one on the extreme right, the one we haven't yet looked at. Now again, you see that the map is on a very small scale. Israel suggests in the Counter-Memorial, page 122, that this Shocair map shows the boundary running along the bed of the

Wadi. But, Mr. President, that simply isn't so. As I read that map, it shows the boundary, the line-- rough as the map may be -- running along the east ridge, along the edge of the ridge of the hills so shown.

And so, Mr. President, having gone through the maps which Israel would have us believe support their locations for Boundary Pillar 91, I have to say that not one of these maps offers any kind of persuasive, let alone conclusive, evidence. They are all maps so general, on so small a scale, as to fail to prove the Israeli case.

There is another point, of course, which arises from these maps. Let us suppose that Israel's case is a case [PVR 27] which she holds <u>bona fide</u>. She believes in this. And that Israel believes that these maps show the boundary to run where she now says it runs -- along the Wadi terminating at the western extremity of the Granite Knob. Now if Israel really believed that to be so, on the basis of these maps which we have just looked at, why is it that Israel's own maps did not show the same thing? Why is it Israel's own maps did not show the boundary running down the Wadi and finishing at the western end of the Granite Knob? Or at Bir Taba? We come again really to this question of consistency of conduct about which I and my colleagues have spoken now a number of times. Consistency of conduct and evidence of good faith.

Now for this purpose, Mr. President, I have to ask you to take up the Egyptian Map Atlas. Can I assume you have enough copies to go around? I have no doubt they could be shared if there is not. And I would ask you, if I may, to turn to the series of Israeli maps-- maps 15 to 19 -- and I think we can look at two. Let me save you too much effort. Look at No. 17-2. It's the coloured map here -- 17-2. You may again need a magnifying glass. Now, look at the terminus of that line down at the bottom. I would ask you to notice really two things. One is that the line, the boundary line, runs straight to the coast. There's no sharp bend about it; it runs straight to the coast. May I ask you to look at one other thing? See the location of grid line 140 in relation to the terminal point of the boundary. You see, just alongside where the boundary meets the sea, you have a line coming down. That is a grid line marked 140. And that grid line lies clearly to the west of the terminal point of the boundary. Look at No. 18-3, another Israeli map -- 18-3. And look at the same two features -- 18-3, down at the bottom. The boundary runs straight to the coast -- no bend. The grid line 140 lies well to the west of the [PVR 28] terminal point of the boundary.

Now what the two maps have in common is a third fact, and that is that both those Israeli maps are pre-1982. Now I'd like you to look at another Israeli map, which is post-1982. Mark that date -- post-1982. That is No. 19 in your folder. It's also, for convenience, blown up here behind me. Look at the same two features. Look at the direction of the line. It does not come straight to the coast, it veers off sharply to the right like that! A totally different direction to the line. Look at the position of grid line 140. You see the number right at the top here? This line running right the way down is grid line 140 and you see it on this map running practically through Ras Taba. But the boundary shown by Israel, the boundary now lies well to the west of grid line 140. What has happened? Has grid line 140 somehow moved? Clearly not! Grid lines don't move like that in the space of a few years. There is only one conclusion to be drawn from this map, Mr. President, and that is that post-1982, on her own maps, Israel has moved the boundary. That boundary there shown is not the same boundary as you find on the pre-1982 Israeli maps. And that not only discloses an inconsistency of position, but it really casts in doubt the genuineness of the Israeli belief that all these older maps which we have just examined support the Israeli position. [Tape No.41] If that were really so, how could Israel's own pre-1982 maps be so different? There is an inconsistency there, there is an incompatibility there which requires to be explained. Of course, we've seen one explanation, we have now furnished to the Tribunal, an article appearing in the Israeli newspaper Hotam; this is the one on which we await an accurate translation. In a rather rough summary which we [PVR 29] provided, the name applied to this game with the maps, by the Israeli newspaper, was "stealing".

Now, apart from the maps there are two what I would call geographical tricks which are played relating to the maps and which I think it's important the Tribunal should understand. The first of these tricks is a geographical trick whereby you change the names attaching to different features. The principal trick is to attach the name Ras Taba to a feature which is actually Ras el Masri.

Now I'd like you to look at Israeli map No. 4, that's in your folder, if you can take your folder, No. 20. Now in your folder No. 20 there are actually three maps, or what is a reproduction of a photograph more or less, not a map. But let me ask you to start with the two maps over to the right-hand side. This is No. 20 we are looking at. Now the two maps on the right hand side are Israeli pre-1982 maps. Look at the bottom where the boundary reaches the sea. You will notice that not only the boundary goes to the east of grid line 140, as we have just seen, but you will also

notice, and this is the point I really want to make, that that small promontory just to the east of grid line 140 is called Ras el Masri. The promontory of course, is the rather small promontory just beyond the Granite Knob, beyond the hotel on the beach, and it is clearly identified. Now look at the Israeli map No. 4 which is on the left-hand side. This is enlarged and in order to assist the Tribunal we have added onto this the red line which is the grid line 140. Now you will notice that not only do the two proposed Israeli boundary lines now lie well to the west of the grid line -- that's the feature we've already noticed -- but also look and see what has happened to the name attached to that same promontory. What it is called now is not Ras el Masri, it is called Ras Taba. It suddenly becomes Ras Taba. Now you may say, well what's the point of that? Well, the point of [PVR 30] course is rather obvious. You will know that the 1906 Agreement refers to the boundary beginning at Ras Taba; and so if you can call the promontory beyond the Granite Knob Ras Taba instead of Ras el Masri it helps the argument that the boundary ends at the Granite Knob. But of course the trick is obvious, Ras Taba never meant that locality -- that is Ras el Masri. Ras Taba is the larger promontory further to the east where the main granite cliffs come down into the sea.

Now that is the first trick which you ought to keep in mind. There's a second trick which is also important; and that is to attach the name Taba not to the whole Wadi but just to the area of the Dom palms. You see, there are so many maps which show that Taba is on the Egyptian side that Israel is in difficulties and the only way round this is to say "Ah, but Taba doesn't mean the whole of Wadi Taba. Taba just means those few huts, the few buildings round the Dom palms. That is Taba." And only on that basis is Israel able to explain a boundary line running down the main Wadi. Now I must say, Mr. President, we find not a jot of evidence to support this suggestion that the name Taba has always been confined to the specific area, the small area of the Dom palms. The idea is so alien to common sense that really the burden of proving it would be a very difficult burden for Israel to discharge and she has made no serious attempt to meet that burden. The proof that Israel does provide consists of a 1949 photograph showing that the Egyptian police post was in the area of the Dom palms. D'accord, but what does that prove? That merely shows that the police post was in the Dom palms. It didn't tell you anything about what was meant by Taba. And of course there were very good reasons why they would initially put the frontier post, the police post, near the Dom palms. That's where they had shelter, the palms; that's where the well -- although the water was somewhat brackish-- that's where the well was, so you build your [PVR 31] dwellings near the well rather than out in the open at

the other end of the Wadi. But that's no reason to suggest that Taba only meant that one small locality; and as you heard today, in oral testimony, there was an Egyptian rest house far to the other side of the Wadi, an Egyptian rest house -- General Hamdy stayed there as a young officer -- and the Wadi as a whole has always been regarded as Taba. The nearest Palestinian post, their police post, was at Umm Rash Rash which is now Eilat, several kilometres to the north further up the coast. Now that disposes of the sixth argument on support for Israel's position.

I come now to the seventh and last which I called for convenience the "strategic" argument. I call it that because Israel's case really requires the Tribunal to believe that Great Britain, having been prepared to go to war with Turkey over the Taba incident in 1906 and having compelled the Turks to withdraw from Taba, finally agreed to allow the Turks to remain in Wadi Taba. In other words, Israel requires us to believe that Wadi Taba was strategically of so little importance that all that was required by Britain was that the Turks should pull back some 300 to 400 yards and just establish their posts in the east of the Wadi rather than control the whole Wadi. In other words they would leave the Dom palm area in Egyptian hands and they would withdraw to the area of the Granite Knob. The idea that that was the position which Britain or Egypt accepted in 1906 is not only farcical but it flies in the face of all the evidence. Now we have set out this evidence, the documentary evidence, in some detail in our Counter-Memorial at pages 87 to 102. But let me just take you through the salient parts of that evidence to remind you.

Now, Owen's first report to Lord Cromer, dated 29 May 1906, which is reproduced in Annex 23 of our Memorial, is replete with references to the strategic interests of [PVR 32] Egypt and indeed also of Turkey; so the strategy was very much in the forefront of the minds of the British negotiator, the principal negotiator, Owen. And he states in his first report: "From what we saw today, I think we can without any loss to ourselves give the Turks the Nakb-el-Akaba"-- that's up in the north -- "provided we hold the head of it". So he's saying -- they can have the Naqb el Aqaba provided we, the British, control the head of it, the rather narrow pass where the roads come through from Aqaba to Naqb el Aqaba and into Sinai. As long as we control the head of it they can have the rest. "If we hold the head we command the situation". Then he goes on: "We, of course, keep Taba, running the boundary line in such a way that no position can command the Wadi-el-Taba, which will be our road down to Taba" -- he means down from the Nakb el Akaba-- "and so to the Gulf of Akaba." That was Owen's thought -- we command the head of the Nakb el Akaba and of

course we keep Wadi Taba because that's our road down to the Gulf of Akaba itself -- and he indicates that in taking his proposed line as the Egyptian frontier, he had taken two points into consideration. I quote again: "First and foremost, we must have a position commanding the road from Akaba to Nekhl" -- now that's the head of Nakb el Akaba -- "and be able to prevent any advance of the Turks along that road. Secondly, we must retain Taba and have a road leading down to it, and this road must be secure and not commanded by any possible Turkish position." That's important because it indicates that the British saw control of the head of the Nakb el Akaba and of Wadi Taba as both of them essential. The Israeli argument suggests that British thinking had changed and Taba really became unimportant in their minds. So in a sense they were prepared to trade off Taba; to give up Taba, or give up part of it to the Turks, provided they kept control over the head of the Nakb el Akaba. That is simply not true. If you read the excerpts, [PVR 33] both were essential in the minds of the British. They wanted to control both the head of the pass and the whole of Wadi Taba running down to the Gulf of Aqaba itself. Both of them were essential, and indeed, if you look at the map you'll see the sense of this because if the British controlled up at the head of Naqb el Aqaba they had to protect this flank -- they were worried about allowing the Turks to come round here and either up the Wadi to threaten their right flank or possibly even further along the coast to come round behind the rear of their positions, they needed both -- the head of the Naqb el Aqaba and also complete control of the Wadi itself.

Now it's nonsense to suggest that that can't make sense because this route up the Wadi Taba was impassable. The survey teams, Wade, went up it. The demarcation teams came down it and if they could get up and down the Wadi, surely so could the Turkish army and, therefore, the apprehension of the British, their feeling that they needed to control the whole Wadi, was perfectly understandable. Now it's not simply these few letters, the whole of the historical record supports this view. When Owen wrote to Lord Cromer on 3 June 1906, this was before the Agreement was signed, and we reproduce this as Annex 23 of our Memorial, he says "We were, however, willing to give them [the Turks] such position on the Marashash side of the Gulf [on the Eilat side] as would, from a military point of view, make Aqaba village and fort and the extreme head of the Gulf [at Aqaba] secure; this would be done by making the boundary line as we had originally proposed." So he's not suggesting a change. No suggestion there of a concession over Taba; and it's clear that whatever his doubts may have been during April of 1906, by the end of May of 1906, Lord Cromer was again convinced of the strategic need for Egypt to retain the whole of Wadi Taba and the head of Naqb el

Akaba. So when he replies to Owen in his letter of 1 June 1906, Lord Cromer says this: "I also [PVR 34] agree that if we hold Taba and the head of the Nakb el Akaba" -- so he needs both -- "we shall have secured our main object, namely, to command the roads from Akaba into the interior of the Sinai Peninsula." And indeed, Owen himself, when he reports to Findlay on 10 July states as follows:

> "Our proposed line is a fair and just one, and fulfils the conditions of an approximately straight line; it is likewise geographical and natural, being for the most part along the watershed; and finally, is a strong strategical one." [Tape No. 42]

Now clearly there is no doubt about the desire of the Turks to stay in Taba. In fact, referring to the position adopted by the Turkish negotiators at the outset of the negotiations at Rafah, this is in July of 1906, Owen states this: "The Turkish Commissioners, acting evidently under instructions from Constantinople, proposed the line which would secure to them the whole of the Nakb-el-Akaba as far west as the thalweg or bottom of the Valley of Taba". So the Turks wanted to stay half-way down the Wadi Taba; that was their aim, to divide the Wadi.

Now Owen clearly opposed this, what he said was this "We were prepared to give them the Nakb-el-Akaba from a point on the gulf at Ras Taba, following along the northern ridge of Wadi Taba to Jebel Fort... The rest of the line to be according to our first proposal." -- And he goes on to say -- "Our negotiations ended in our fixing the line practically and almost exactly according to this ...." And Owen's General Report at the end of the negotiation confirms this. He says "The exit from the pass [i.e. Nakb el Akaba] is commanded by Jebel Fathi and the Mofrak plateau, and I considered that as long as we kept these, together with Thamilet el Radadi, (the water supply near Mofrak), and we [PVR 35] secured the whole of Wadi Taba, there would be little use in keeping the Nakb for Egypt, and, from a military point of view, it would be better not to do so".

Now Israel's Rejoinder suggests that none of this strategic argument really makes sense. They suggest the British were prepared to do a "trade off" for Wadi Taba down here for the Nakb further north, which is not so. They suggest also that if the Turks were able to be up on these hills beyond what Egypt says is the boundary line, the Turks from these positions, to the east of the Egyptian boundary line would, in any event, be able to control the Wadi Taba and to render it strategically useless to the British. But that of

course pre-supposes that the Turks got there first. And if you take the other possibility, which is that the British and the Egyptians fortified this line (and you've seen the mountains), if they fortified these lines then they would be able to not only command the approach to Akaba, they would be able to protect the Wadi, to protect the right flank of their positions at the head of the Nakb el Akaba, and also to protect any landings of supplies or reinforcements at the beach. The line made perfectly good strategic sense to the British and Egyptian strategic interests.

Now, Mr. President, that really brings me to the end of what I've called the seven strands of the Israeli positive case to support the two positions they have for Boundary Pillar 91. I would like now, Mr. President, to turn to the Egyptian case for Boundary Pillar 91, that is 91(E).

Now just a preliminary word of caution. This is not a case in which Egypt has to prove that it acquired sovereignty over Taba by occupation, that is to say by a continuing and effective display of State sovereignty. Israel repeatedly points out the rather minimal exercise of sovereignty by Egypt, the rather minimal activity in Wadi Taba, almost implying that, in some way, this weakens the Egyptian claim. [PVR 36] But the Egyptian case is not based upon a theory of occupation. We are not proving title by occupation. We had title long before the 1906 Agreement and occupation was never the basis of the Egyptian claim. This case is simply one about the location of particular Boundary Pillars in 1922 when the international boundary was internationally recognized and therefore when Egypt's title did not rest upon some claim of occupation. There is no dispute whatsoever about Egypt's sovereignty over the territory to the west of that boundary. The only question for the Tribunal, is where do the specific disputed Boundary Pillars lie?

Of course the reason for this rather minimal Egyptian activity in Wadi Taba is perfectly obvious. With the Turkish withdrawal from Aqaba after World War I, this area lost its strategic significance. Since that time, the whole of the strategic interests have shifted, as we all know, much further to the east. With the Turkish withdrawal after the end of the First World War, Egypt no longer feared an attack from Aqaba and so interest in this area declined. And you have seen the area. It is a remote area, not an area in which Egypt would feel impelled or constrained in any way to exercise a great deal of State activity. It did what was necessary. It put a border post there to control possible transgressions or incursions of the border at that point.

Now if the crux of the issue is where this pillar is, this is the pillar which both Parties have agreed to identify as Boundary Pillar 91. If the crux of the issue is where that pillar, which they both agreed to identify as Boundary Pillar 91, was located in 1922 it follows that the historical record which I have examined at some length, the record of events prior to 1922, is just that. It is the historical record. As Professor Abi-Saab told you, it simply explains how we arrived at that position in 1922. [PVR 37]

Now without repeating what has been said earlier, I would really just make a few observations.

Now the first is, as I said, that the British and Egyptian strategy in negotiating the 1906 Agreement really makes no kind of sense except on the basis that Egypt was to control the whole of Wadi Taba. The Wade and the Owen reports support the Egyptian case entirely. Wade refers to the setting up of the pillars and the final pillar at a point where they, the east cliffs, strike the Gulf. Owen refers to placing the pillars on the Taba Hills with the final pillar at Ras Taba and you remember that, in his own rough map, he shows the line running along the ridge to the east of the Wadi, leaving the entirety of the Wadi on the Egyptian side.

The text of the 1906 Agreement is equally clear and whether we take the English translation from the original Turkish text (that was the one provided by Egypt, it is document 4 of our Counter-Memorial), which talks about the line "passing by the summits of the mountains lying east of and overlooking the Wadi" or take the English version attached to Owen's Report, "begins at the point of Ras Taba and follows along the eastern ridge overlooking Wadi Taba", from either text, the conclusion is inescapable. The difference between the summit of the mountains, the heights, the ridge, really is one of degree.

What is important in all these phrases, what is common to all these versions, is that the line ran overlooking Wadi Taba, overlooking Wadi Taba. Now you will see that there is simply no way in which you can describe the Israeli lines running through the middle of Wadi Taba as "overlooking" Wadi Taba. They can't overlook Wadi Taba when they run straight down the middle of Wadi Taba. But this line can, this line can properly be said to overlook Wadi Taba.

Now with that, Mr. President, I can leave what I would call the historical evidence and I want to look at the map [PVR 38] evidence relating to the Egyptian position. The map evidence is important in this case very largely because we have so little State activity. Therefore maps do become important. If there had been

a great deal of State activity we could look to that to give us the kind of evidence we need to prove the respective claims of the Parties. We don't have a lot of State activity, so the maps become of crucial importance. They are particularly important in this case, at least after the demarcation, because after 1906, and following the demarcation, the maps were drawn in the knowledge that there had been a demarcation. So they achieve a special importance precisely because of that.

Now we know as a fact that there had been no real survey, certainly of this area, prior to 1912-13. The first careful survey of this area was carried out by Newcombe and his team and the British 1915 map was really the first map to embrace and to show the evidence produced by that survey. Therefore, the British 1915 map has a degree of accuracy, a degree of reliability, and an importance far greater than can be attributed to any of the early maps which you have just examined, the maps which form part of the Israeli case.

Now the pre-1915 maps, of course, are certainly numerous I suppose. We have that group of almost contemporaneous maps of 1906. There are three maps on a very small scale. These are all 1:500,000. That is the map annexed to the English version of the Agreement, the map attached to the Owen Report, and the map attached to Wade's report. We have looked at these but, as I suggested to you, they are on so small a scale that they really don't help either way.

There are, of course, other larger scale maps which are more helpful. One of these is the authentic Turkish map, the map provided by the Turkish Government, which you have in your folder at No. 21. Now I won't say that this is a very good [PVR 39] map, but at least it does show a number of things with some clarity. If you look at the authentic Turkish map, No. 21 in your folder, it really confirms Egypt's interpretation of the smaller Owen and Wade maps. If you look at the triangle at the bottom, now that is clearly marked A.1, there can be no possible doubt that that astronomical point is A.1 and not B.1. It is equally clear that the boundary line runs some distance to the east of that point and indeed it runs along the line of the hills or the cliffs overlooking the Wadi. There is one further point and that is the line runs straight. It runs straight to the coast, there is no bend in the line as it reaches the coast. So that map, maybe not a very good map, but of the early maps, that authentic Turkish map supports the Egyptian position.

Then we have what we call "Owen's rough sketch". This was the map produced in the Egyptian Memorial map No. 4 and it is No. 3 in your folder. So you will have to go back in your folder, it is No. 3 in your folder

and it is now blown up on the board behind me. Again, it is helpful because it is on a much larger scale. One can see much more clearly what these positions are. Now as to this line, there really cannot be any doubt that that line runs along the ridge of hills overlooking Wadi Taba. That line cannot by any stretch of the imagination be described as running along the bed, along the middle of the Wadi. And it reaches the coast in a straight line at Ras Taba, not Ras el Masri but Ras Taba.

Then we have the Egyptian 1906 map which is map No. 22 in the folder. Now of course the whole map is larger than this, I have just given you the Taba sector, because that is what I am talking about. Now this is not a very perfect map, but it is helpful and there are a number of features which I think are quite clear. It is on a fairly large scale which is of course helpful. The scale is 1:40,000 and it is produced by the Survey of Egypt in Cairo. The map also, in its legend, [PVR 40] describes the boundary as being drawn in conformity with the 1906 Agreement. [Tape No.43] Look at this map. The line clearly runs along the line of hills. That line cannot be said to run down the Wadi Taba. You will also see that the line doesn't deviate at the end. The line runs straight to where it meets the coast. You will also see A.1 marked on that map, down at the bottom; see the little triangle marked A.1. Remember A.1 is the location of what is now the Sonesta Hotel. And you will see the line running quite clearly well to the east of A.1, well to the east of what is now the location of the Sonesta Hotel. Now, I have to remind you that, in Israel's Counter-Memorial, Israel suggests that that triangle is not really A.1; it should be B.1. In order to support that idea, despite of course the map clearly saying "A", not "B", Israel has tried to prove its point by a rather ingenious superimposition exercise. You may remember that Israeli map No. 3, produced in the Israeli Counter-Memorial, at page 112, had a figure in which they had superimposed this map onto another map in order to show that that astronomical point really was B.1 and not A.1. Mr. President, I won't waste your time with this superimposition exercise. Let me merely put one thought into your mind, and that is, when you look at that superimposition exercise, just see whether the locations for the Boundary Pillars, Boundary Pillars 89 and 90, coincide. Boundary Pillars 89 and 90 are agreed. No dispute about the location. See whether on the superimposition exercise, that's Israeli Counter-Memorial, fig. 9, page 112, see whether those two Boundary Pillars identify. You'll find, I believe, they do not coincide at all, and that, I think, shows that the superimposition exercise is inaccurate.
[PVR 41]

Now we have one or two other later maps, which I think for the sake of completeness we have to look at, since the evidence is important. There is a British War Office map of 1907, and that is No. 17 -- No. 17 in your folder. This is the map we have already looked at, with the legend saying it is not to be relied upon. I think all I would say of this map is, not only is it not to be relied upon, but it really doesn't help either side very much. The only positive clue which it affords is that the triangle shown there on the coast is certainly A.1 and not B.1. So, although it may not do much for the Egyptian position, it certainly doesn't help the Israeli position at all.

Then we have the 1908-09 Rushdi map, which we have already examined -- that is No. 15 in your folder. We have seen that the Rushdi map, No. 15, in fact supports the Egyptian position. It may not be a very good map, but what is clear there is that the boundary line runs straight to the coast. It runs along the hills, and it runs to the east of the astronomical point A.1.

Then we have the 1911 Survey Department of Cairo Map, which is No. 23 in your folder -- No. 23. What you have there in No. 23 is a full-scale close-up of the area we are concerned with, and again it has the same features. The line runs straight to the coast; the line runs along the hills, not down in the bottom of the Wadi, and A.1 -- A.1, that is the hotel site,-- lies quite clearly to the west of the line.

Then we have the 1913 Shoucair map, which is No. 18 in your folder. It's the one on the right-hand side of the three maps shown on that sheet, No. 18. Of course, on a very small scale -- not very persuasive therefore -- but it does not show a line running along the bed of the Wadi; it shows a line running along the ridge of hills.

Now that, Mr. President, is really all we can show you by way of the early maps, in support of the Egyptian [PVR 42] position. Our submission is that, though they may not be terribly good maps, they do demonstrate consistency with the Egyptian position. They do not demonstrate consistency with the Israeli position. But the important maps come later. The important maps come after the survey conducted in the years 1912-13. The full description of this survey is given in the Egyptian Rejoinder, Annex 1. And what essentially happened, you may remember Sir Ian Sinclair telling you, was that there was a joint, and rather large-scale, British/Egyptian survey of northern Sinai, and they reached the Taba area around 1912-13. They wanted to survey not merely on the Egyptian side, but over on the Turkish side, and that might have caused difficulties. So an approach was made to the Turkish Government and the Turkish Government agreed to allow,

not the sort of original large survey team, but a group designated as "the Palestine Exploration Fund", which is a non-governmental body, to do the survey on the Turkish side of the frontier. That was agreed in 1913, October 1913, and this rather smaller team, non-governmental, carried out their work and they got down to Beersheba without really any difficulty. But beyond Beersheba they began to approach Aqaba -- this is 1913 remember -- as the Turks became suspicious of this non-governmental British group of surveyors/archaeologists and so they refused to allow this group to survey on the Turkish side, near to Aqaba, and of course near to Taba. It is clear that they did this. In the Rejoinder to Egypt's pleadings, Annex 10 contains a letter of 10 March 1914, which states that there had been this refusal by the Turks to allow the survey to proceed. Now that explains why the survey is, as it were, in this area accurate on the Egyptian side, but not on the Turkish side. The Turkish side only, for not being surveyed.

Now, bearing that in mind, I would like to deal with the maps and really divide them into three different categories. [PVR 43] I'll take, first of all, the British maps. Then I will take the Israeli maps. And lastly, I will take the Egyptian maps.

So we'll start off with the British maps, and the first one, which is No. 24 in your folder and is now on the blow-up behind me, is a British War Office map of 1915 -- No. 24 in your folder. Now, the legend of the map says, surveyed in 1912-13, and indeed the sheer degree of detail to be found on the Egyptian side confirms that this map is the result of a careful survey. It also says on the legend that the south-east portion of the sheet has not been surveyed. But that doesn't mean Taba. That means the Turkish side because, as we've explained, this exploration group was not allowed by the Turks to do anything on the Turkish side. So all that legend means, the south-east portion has not been surveyed, all that means is that they didn't go on the Turkish side in this area. It does not in any way minimize the accuracy of the survey on the Egyptian side in this area.

Now if you turn to the quality and the significance of this map, then in our submission this is the first map which really has very considerable probative value. It's on a 1:125,000 scale and you'll see that it shows a Boundary Pillar -- here -- marked B.P. -- exactly in the position of BP 91(E), it corresponds to the Egyptian position. And moreover, it's not merely its position, its location; you will see underneath the letters B.P. the numbers 298. Now that's an elevation: 298 feet; 91 metres. That is exactly the height of BP 91(E). So the map supports the Egyptian position not only as to location but even

as to the elevation of that pillar. You will see also that the line runs straight down to the coast; there is no suggestion of a bend in the line over the last sector and you will see also there is only one pillar, not two, one pillar marked on that map. So in other words the so-called Parker Pillar, this mystery pillar, simply isn't there marked on the map in 1915. [PVR 44]

Now Israel obviously recognizes that this is for Israel a very damaging map and what Israel has said in her written pleadings is that the map is inaccurate because it was not based upon any survey. Now unless we are using the word survey in a different sense, that is patently wrong. And indeed Israel herself has just before these oral proceedings started deposited with the Tribunal the field plots which indicate that a survey had been conducted; a survey on the basis of which this map was prepared.

There are other mistakes which are perhaps not so important. Israel describes the surveyor as Colonel Newcombe of the British Intelligence. Well, he was only a Captain, I think, at the time. He wasn't quite so elevated. And he was not in the British Intelligence, he was an engineer. But that's perhaps a small matter.

Israel also says that the map is a distortion; its the British have deliberately distorted this map, and they point to the location of this line of longitude, the line of longitude 35 degrees, which as you see on the map runs through Aqaba. And they point to earlier maps where 35 degrees longitude does not run through Aqaba, it runs further to the west. Well, the explanation for that is clear: this is the first accurate map -- there is no suggestion that the earlier maps had that degree of accuracy. But in addition, what conceivable interest would Britain have had in 1915 in juggling with the location of a line of longitude? What would be the point of that? No possible purpose could be served by that. Indeed, the whole purpose behind these 1915 maps was to provide the British Army with accurate maps of the whole of Sinai. That was their purpose. Not to falsify the geography. To get as accurate a map as possible. And indeed, on the specific point of the location of the boundary, at Boundary Pillar 91(E), at the elevation 298 feet, we have ample confirmation, ample corroboration, in later evidence, as we shall see in due course. There was [PVR 45] the 1931 letter from the Survey of Egypt to the Acting Director of the Palestine Survey. Same coordinates, same elevation. There is Dr. Ball's survey card: same coordinates, same elevation. There was the trig list, Trig List No. 144. Same coordinates, same elevation. Now, even if this story about Britain somehow wanting to falsify the map in 1915 were true, why would they want to falsify all the

later evidence in the 1930s and the 1940s? I mean doesn't the fact that the elevation and the coordinates are consistent from 1915 through to 1930, through to 1940, suggest that with that degree of corroboration over the years the thing was accurate? And that's why there is this corroboration. It was accurate. There was but one pillar at 298 feet at where Boundary Pillar 91(E) now stands. [Tape No. 44]

I turn now to the next map which is another British 1915 map. That you will find in the Egyptian Map folder -- this one -- and it is map 9-2 and 9-3. You will need really to look at 9-3 in order to see the Taba area and I think you will also probably need your magnifying glass. But just look at that other 1915 map. The boundary runs straight, there is a mark "BP" -- Boundary Pillar -- there are numbers beneath it 298 feet of elevation. Exactly consistent with the other map which you have just seen.

Then we have a later map, another British map of 1943. You will find this in No. 10-2 of the Map Atlas, and there is a blow-up of the map here behind me on the board. Now this is a 1943 map so there is no suggestion here about the British trying to somehow deceive the Turks, that was the least of our worries in 1943. [PVR 46]

Look at the evidence that it provides. It has not only got Ras el Masri right but look where the Boundary Pillar is, the little triangle. Look at the elevation under the triangle. You will see that the number there is 91, now it is clear from the legend that here the elevations are in metres so it is 91 metres which is the same as 298 feet. Same elevation, same position. Now it is true that Israel has commented about this map, that this was a war-time map published by the British and it was marked "Not to be published". But of course that meant not to be published in war time-- there was no suggestion that this map did not become part of the public record after the war and it has been available for many years. Its advantage is of course that it is on rather a large scale, it is 1:25,000 and it also shows not merely the Boundary Pillar but it also shows the location of the Customs House and the Rest House. Look at the letters RH, Rest House. Mr. President, they are well, well to the west of the boundary, there can be no possible doubt as to where that boundary runs.

Then we come to a 1944 Survey of Palestine map and if you look at your Egyptian Map Atlas, I think the relevant map is 12-2. Not very clear, but if you take your magnifying glasses and look at the boundary you will see that the boundary lies well to the east of what is described as Taba and also the Frontier Administration Post. Indeed if there is a bend in the

boundary, it is actually a bend the other way, not towards Taba but even slightly away from Taba. Now this map has a rather special importance because it was this map, the 1945 Survey of Palestine in the 1946 edition, which was the map attached to the Partition Resolution and the map attached to the [1949] Israel/Jordan Armistice Agreement which Israel signed. Israel signed this map and, as Sir Ian Sinclair has explained, it just isn't possible for Israel to say [PVR 47] "Oh well, there is a disclaimer on the map, it says it is not an authoritative statement about international boundaries". States do not rely upon that kind of general disclaimer. If a State had a real reservation about the accuracy of a boundary, it would say so, it would not rely upon that kind of general, formal and really rather normal disclaimer.

Then we have the 1948 survey of Palestine, which is No. 14 in the Map Atlas, so if you turn over in the same Map Atlas to 14 you will see the line in virtually the same position as the 1944 survey, but of course map 14 is a full-scale reproduction. Its scale is 1:500,000 and it shows on the Egyptian side, not only Taba, but also Ras el Masri. So the area near the Granite Knob, Ras el Masri, is clearly on the Egyptian side.

Now those, Mr. President, are the British maps and I again suggest to you that the idea that there could have been some British bias in these maps for all this period is simply not credible, whatever the position may have been vis-à-vis the Turks in 1914-1915. That same position did not remain constant for the whole of this long period.

I want now to turn to the Israeli maps which, as we shall see, offer very cogent evidence in support of Egypt's position. Again the maps will be in the Egyptian Map Atlas and I suggest we start with Map No. 15 which is a map produced by the Survey of Israel in 1953. So this is the 1953 Survey of Israel Map No. 15. Note the boundary, clearly to the east of Taba, in fact a boundary which conforms to the British maps which we have just looked at. Note also the location of the grid line 140 which is west of the boundary.

Then we have the Survey of Israel map of the year 1950, which is Map No. 16 in your atlas. Exactly the same, Taba to the west, grid line 140 to the west, and the [PVR 48] line coming straight down to the coast. And the maps are consistent.

Go to the 1951 Survey, which is map No. 17-2. The Israeli Survey of 1951. Taba lies to the west of the line, Ras el Masri lies to the west of the line, grid line 140 lies to the west of the line.

Then the Survey of Israel of 1955 which is 18-3. Same story, Taba lies clearly to the west of the boundary, the boundary runs straight down to the coast, and grid line 140 also lies to the west of the boundary and so does Ras el Masri. Everything fits.

So the conclusion which I offer you, Mr. President, is that on the basis of Israel's own maps, on the maps I have shown you so far, we have not just one map but a whole series of maps which entirely support the Egyptian position.

I want now to turn to the Egyptian maps and of course it may be thought that because these are Egyptian maps, they would be in some way self-serving, they would be designed to serve Egypt's position. But remember two things. First of all, there was never any dispute about Taba. Until 1982, Egypt never had reason to believe that there was a dispute about Taba, so Egypt had no reason to distort maps to make them serve its own position. It didn't need a position because there was no dispute. The second thing about the Egyptian maps is that they show entire conformity with the British maps. There really is no difference and the very fact of conformity between the Egyptian maps and the British maps, I suggest to you, indicates that the Egyptian maps were not self-serving, they were entirely accurate.

Now let us look at these in turn. Let us begin with the 1926 Survey of Egypt map of Sinai, it is in the Map Atlas No. 4. It is 1:250,000 and you will need your magnifying glass I am afraid. It shows the boundary line running to the east of Taba, well to the east.

Then turn to the later 1935-38 Survey of Egypt map, that is at 5-7. Now this is on a scale of [PVR 49] 1:100,00, therefore, it is quite a large-scale map relatively and 5-7 which you have in front of you is a full-scale section. Now this shows not only the boundary where Egypt alleges the boundary to run, but also rather faint in the bottom you will see the word "pillar" written. Only one, just pillar. Now the difference of course between the early maps and later maps is that with the later maps, the Palestinian grid system was superimposed.

So, if you turn now to the 1935-38 survey on the Palestinian grid system, which is map 6-3, you will find, as it were, the same map, but it is on the Palestinian grid system, and this shows an actual pillar. Down at the bottom you will see the word "pillar" written and under the word pillar you will see the numerals 91. Now that is in metres, 91 metres, which is 298 feet, which is exactly the elevation of Boundary Pillar 91(E). You will also see on that map

that the Rest House and the Frontier Post are well on the Egyptian side of the frontier line.

Now, Mr. President, it really cannot be the case that with all these British maps and all these Egyptian maps showing the same story that there is a distortion or a deliberate bias in these maps. After all, remember that for much of this period Egypt and Britain as Mandatory were on opposite sides of the frontier, so if anything their interests would be opposing. If there was any bias on the one side, it would be counteracted by the other. The very fact that you have Britain as Mandatory on the one side of the boundary and Egypt as sovereign State on the other side of the boundary, with what might be potentially opposing interests, showing absolute conformity in the boundary, leaves only one possible conclusion. And that is that the boundary as shown on these maps was the boundary accepted by both parties, without dispute, and it is the boundary which conforms to the Egyptian position. [PVR 50] It shows one Boundary Pillar at an elevation of 298 feet or 91 metres. [Tape No.45]

Mr. President, that brings me to the end of the maps. I want to turn to what I would call external evidence which supports the British and Egyptian maps, but that really takes me into another area and since I am sure you are as tired and weary as I am I would be grateful if we could end for this evening.

The President: Thank you. We shall stop then today. and start tomorrow at 9h30.

Mr. Sabel: Sir, I'm sorry, just that the Director-General of the Foreign Ministry, Mr. Abraham Tamir, regrets to inform you that he had to go back to Israel. His mother died so he'll be no longer with us for the rest of the week.

Verbatim Record of the Hearing

Thursday, 17 March 1988

Morning Session

[PVR 1] [Tape No. 46]

The President: The meeting is opened. May I invite Professor Bowett to continue, please.

Prof. Bowett: Thank you, Mr. President. Mr. President, this morning the Tribunal will need the Egyptian Map Atlas which I referred to yesterday. They will need the volume of maps and illustrations in the folder which we have provided. They will also need the photographs, the six photographs which Israel deposited shortly before the oral hearings began and they will need the field plot sketches which are the preparation for the 1915 map. Can I rely upon those being available?

The Registrar: If I could be of some assistance. I understand for the benefit of Professor Bowett that we have three sets of the field sketches available. I think that the Members of the Tribunal could share between them these three [PVR 2] sets. In addition there are also three sets, at least, of the photographs.

Prof. Bowett: Mr. President, could I also express our thanks to the Israeli side who provided this fuller and more accurate translation of the article from the newspaper. It's the article we filed in Hebrew with a rather summary and inaccurate translation at the beginning of these proceedings. Do all Members of the Tribunal have that?

Thank you, Mr. President. Well now, you recall that I, yesterday, dealt in detail with the maps produced by Great Britain, by Israel, and by Egypt. The three States intimately connected with this frontier. And I ended the examination of those maps

last night, no doubt to the great relief of the Tribunal. What I want to turn to now are a number of pieces of confirmatory evidence. Pieces of evidence which support entirely those maps and, therefore, which support the conclusion which those maps themselves indicate, namely, that the boundary does accord with the Egyptian position and that the location of Boundary Pillar 91 is indeed the location BP 91(E). Now, if I may turn to the other supplementary, corroborative evidence, I would first mention three items which are items of a technical character. They are survey data and they're first and foremost the trig list, Trig List Number 144, published by the British General Headquarters between the years 1941 and 45. There was actually a revised addition in 1956 and that trig list has been produced in the Egyptian Memorial, Annexes 9 and 10. I would ask the Tribunal to look with some care at that trig list and you'll see that on the trig list, there is a list of stations, of trig points, on the Palestine grid and at the bottom of this long list there is an item which reads, station 190, the coordinates are given, eastings 140295 in metres; northings in metres 878478; and then comes the height· height 91.6 metres, Boundary Pillar. And that is the last of the trig [PVR 3] points given on that list. In our submission it conforms exactly to Boundary Pillar 91(E), the Egyptian location. That's the first item.

Then, to confirm that, we have what we call Dr. Ball's Survey Card, made in 1941, for the same trig point. Now, that is given as Document 77 to the Egyptian Memorial and if the Tribunal will examine the reproductions of that document -- these are photostat copies of the original -- you will see that Dr. Ball has a survey card relating to L190. And indeed, you'll see in the top left-hand corner, he's used the notation L190 to replace the earlier notation of B90. In our submission he's talking about exactly the same Boundary Pillar. There you have the latitude and longitude of this pillar and he identifies it as a boundary mark. Latitude 29 degrees, 29 minutes, 35.66 seconds. Longitude 34 degrees, 54 minutes, 07.15 seconds. Altitude, and you'll see he's made an adjustment, a correction to the altitude -- he'd formerly got it at 90.70 metres -- and he's altered that to put 91.65 metres, 91.65 metres; exactly the altitude of Boundary Pillar 91(E).

Then we have an even earlier document. That is the letter from the Director of the Survey of Egypt to the Acting Director of the Survey of Palestine, a letter written in December of 1931. This was the letter which Egypt submitted as item (a) of the documentary submissions immediately prior to this Hearing. Attached to the letter you'll find a list of stations. One of them, B90, the same B90, labelled as a Boundary Pillar. The latitudes and longitudes are

given. Latitude 29 degrees, 29 minutes, 36.8 seconds. Longitude 34 degrees, 54 minutes, 07.3 seconds and again the height. This time in feet; 298 feet, corresponding to 91 metres. Exactly the elevation of Boundary Pillar 91(E). [PVR 4] [Tape No.47]
That technical data at varying periods confirms what the maps themselves have shown, as we saw yesterday, that there was one pillar at an elevation of 91 metres, or 298 feet, and that corresponds exactly to the Egyptian location.

The second item of corroborative evidence is the letter written by General Hilmy, of the Egyptian Armed Forces, to UNEF, the United Nations Emergency Force, on 10 August 1960, which is Annex 69 to the Egyptian Memorial, and in General Hilmy's letter, at the request of UNEF, he was providing what the Egyptian Government regarded as the correct location of Boundary Pillars. The Tribunal will remember from the pleadings that UNEF was extremely concerned about locating the boundary with some precision, precisely because they were not allowed on the Israeli side. They could only operate on the Egyptian side. And in response to a request from UNEF, General Hilmy listed a number of these Boundary Pillars and he gave L190 at an elevation of 91.65 metres, the same elevation and his reference to the pillar as L190 conforms again exactly to the references which we've seen on these survey cards. The coordinates, you should mark, given in General Hilmy's letter, are coordinates on the Egyptian grid, whereas on the cards I've just referred to they are on the Palestinian grid. So though the coordinates differ the Tribunal must remember that they are done by reference to two different grids. In fact they correspond exactly. The other feature of General Hilmy's letter is that as you will see he lists only one pillar and that at the location and height of Boundary Pillar 91(E).

There is also this map behind me now which was produced in our Memorial as Map 6-3. It's the map used by the Yugoslav [PVR 5] Contingent in UNEF. Now as I have just said, the Yugoslav Contingent was extremely concerned about the accuracy of the boundary because they dared not trespass on the Israeli side. And this is the map which the Yugoslav Contingent was using and it would be extraordinary if, given their concern about the accuracy for the location of Boundary Pillars, they did not check and verify the map they were using. Here is the map and here you have, right down at the bottom, a mark, the word "pillar", pillar in the singular, and, underneath the word pillar, the numbers "91", "91 metres". Then we have another piece of corroboration in the Concession Map prepared by the Anglo-Egyptian Oil Company between 1921 and 1922. It's in the Egyptian Map Atlas at No. 26. If you turn to the Egyptian Map Atlas, No. 26, you will see

there -- 26-2 is perhaps the best one to use -- 26-2. Now there, if you take your magnifying glasses, you will see that on the coast the boundary line used lies well to the east of Taba and there is a mark at the end of the boundary, underneath the mark, the number 298. That's clearly an elevation in feet corresponding to 91 metres; corresponding to the Egyptian location.

Then we have the United States State Department map, which you will find on the following page at No. 27 in your map book. No. 27. As you will see at the foot of the map, this is prepared by the Department of State, the Division of Map Intelligence and Cartography. Of course the detail is very small, but with your magnifying glasses, down at the bottom you will find the boundary running well to the east of Taba. That's the United States map.

We also have the corroboration by the people-- the few brave souls who travelled along this coast. Miss Plowden, as we've heard before, on her travels she saw a high hill, a high hill, upon whose summit a cairn marks the frontier. Now in our submission, Mr. President, the Granite Knob is not a high hill in that particular locality by reference to the cliffs [PVR 6] which lie to the east and west, and Bir Taba is certainly not a high hill. So that description, in our submission, corresponds to Boundary Pillar 91(E). Then you have Beadnell, this other traveller, a geologist of considerable repute, who "tied" his survey to the penultimate beacon. And the significance of that is that he clearly was not referring to a beacon on the shore, or anywhere near the shore. Then we have the provision in the [1949] Armistice Agreement between Egypt and Israel. Now remember this is an Agreement which the two Parties signed, an important Agreement, in [1949]. And at the insistence of Israel a specific provision was put into that Agreement and that is Article VIII, paragraph 4. It says: "The road Taba-Quoseima-Auja shall not be used by any military forces whatsoever for the purpose of entering Palestine." The evidence suggests that the reason for that provision was that Israel was apprehensive about a landing being made at Taba by the Arab Legion and from Taba entering Israel from the south. Therefore, Israel's concern was to make any such action a breach of the Armistice, not merely by Jordan, but also by Egypt. Now that provision on its face suggests that Israel recognized that certainly at Taba, at the Taba end, the road lay in Egyptian territory. If the road lay within Israeli territory they could scarcely be asking Egypt to control it. The clear indication is that the road at the Taba end, where the road starts, lay under Egyptian control and in Egyptian territory. [Tape No.48]

We find it impossible to reconcile that provision with the idea that Egyptian territory ended at the Dom palms and Israeli territory came right up to the Granite Knob. Because clearly if Israeli territory came right up to the Granite Knob, they were on the beach and they had a right to be in a [PVR 7] position from which they could control any use of the beach, any landing at Taba beach, of the kind which Israel feared. Now, Israel has suggested in her pleadings that the road which the provision had in mind was the road which went from Taba round the coast by Ras Taba and then into the Israeli side up Wadi el Masri and then into Sinai. Mr. President, we do not believe that is so. We believe that the common understanding of the two Parties in [1949], which was the same understanding as the British had in 1906, was that there was a route up the Wadi Taba, right up the Wadi Taba, to Ras el Naqb and from there it would be possible to move into Palestine.

In other words, the provision made sense, and could only make sense, on the basis that the entirety of Wadi Taba was in Egyptian control. It was Egyptian territory. And that is why they needed that provision, that safeguard, in Article VIII, paragraph 4, of the Armistice Agreement.

And we have another piece of corroboration. This is the Background Paper which Israel itself wrote to the Secretary-General of the United Nations and to which Sir Ian Sinclair has already referred. Now this is May of 1956, and Israel herself says "... the frontier between Egypt and Israel runs from a point south of Um Rash Rash" -- and remember, that's Eilat now -- "runs from a point south of Um Rash Rash, in a north-easterly direction." No mention of Taba. And indeed on the basis of Israel's present pleading, her present argument, that is a quite extraordinary way of describing a terminal point lying within Wadi Taba. It cannot be consistent with that statement.

Finally, Mr. President, we have what we regard as very important evidence. That is the evidence of the actual pillar remnants, at the location of Boundary Pillar 91(E). And the Tribunal will recall that in comparison, for their two positions in the Wadi, Israel can provide nothing. What was [PVR 8] found there as remnants on the location of Boundary Pillar 91(E) were some old rocks, part of the masonry from which the pillar had been originally constructed. On one piece of this masonry there was a digit; the number "9" was visible. In addition, lying on a slope nearby, but some distance away, an iron flange was found, exactly the type of iron, the shape of the metal, which was used in the original pillar. Not an angle iron, not one of these boundary markers used in the course of the 1981-1982 demarcation, but metal of the exact type

which was used in the original construction of the Boundary Pillars. And in the ground itself there were remnants of concrete, clearly upon which the pillar had been erected.

Now, something has happened not only to the pillar but to those remnants. It's impossible for Israel to deny that Israel was in control of that site. Egypt had no control. Egypt was not in possession. Therefore, whatever happened, happened under Israel's control. And Israel must know what happened. We do not know, because we were not there. But we have an account of what happened, which is of some interest, and this is the account published in an Israeli publication called Monitin. It's an article written by an Israeli journalist by the name of Ron Edelist, if that is the pronunciation, and we have provided a translation of this article in our Rejoinder, Document 3. And if I may, Mr. President, I will just read to you some of the significant parts of this article. The author says this: "Following the Camp David Accords, in which it was agreed that, in exchange for peace, Israel would withdraw to the British Mandate border, it was decided at a high Government level to remove the 91st frontier stone". Then he goes on "The stone stood on a rocky hill, north of the Avia Sonesta hotel, so that its position meant the whole of Taba, including the hotel and the village, belonged to Egypt". And he goes on: "A two man team, one of whom was the 'surveyor', and [PVR 9] the other, 'the operator', went to that rocky hill, smashed up the frontier marker, and dumped the fragments in the sea". Later he describes how an inspection team -- this is the joint inspection team -- arrived on the same spot. And he says a patrol of the combined Israeli-Egyptian Committee arrived at the spot. "The Israelis, who were expecting to find a clear area, and wide scope for a legal, historical, and geodesic disputation, saw, to their horror, the 91st frontier marker, not whole in fact, but with clear signs of a base, and a scattering of the stones of the pyramid about 1 metre in size, while one of the Egyptian surveyors found by accident, in the nearby Wadi, the iron rod" -- I assume he is referring to the same piece of iron from the top of the monument -- "the iron rod which had been positioned inside the frontier stone. After an angry enquiry after the visit, it transpired that the surveyor and operator had mistaken the area and dumped into the sea the nearby triangulation stone about a hundred metres towards the border". So there may have been a triangulation stone nearer the border, a hundred metres away. "All that remains is to blame the media"-- that's Monitin -- "for publishing [it]".

Now that is an explanation of what happened to Boundary Pillar 91(E) from Israeli sources, and it is the best explanation we have. Indeed, Mr. President,

the only explanation we have. And thus we come to a conclusion which in our view is one which is overwhelmingly based upon the weight of the evidence. The sheer weight of the evidence supports Egypt's position for Boundary Pillar 91(E). [Tape No.49] We have the whole history of the 1906 Agreement. We have the text of the 1906 Agreement. We have the record of the [PVR 10] demarcation derived from the Wade and Owen Reports. We have all this map evidence, which we so laboriously examined yesterday. We have the other pieces of corroboration which I have just examined this morning, and we have these pillar remnants. And I repeat again, Israel has nothing to show for any pillar remnant at Boundary Pillar 91. And Egypt has every confidence in the ability of this Tribunal to weigh this mass of evidence against those seven flimsy strands, those straws in the wind, which I examined when I first began.

Mr. President, that concludes my statement on Boundary Pillar 91, and with your permission I would now like to introduce our first witness. May I ask His Excellency Kamal Hassan Ali to join me?

ANNEX III - (B)

EXTRACTS FROM THE OFFICIAL VERBATIM RECORD OF THE ARBITRAL TRIBUNAL'S HEARING ON 12 APRIL 1988, MORNING AND EVENING SESSIONS

ORAL PLEADING OF PROF. DEREK BOWETT DURING THE SECOND ROUND WITH REGARD TO THE LAST DISPUTED BOUNDARY PILLAR NO. 91, TOGETHER WITH THE CLOSING STATEMENT OF AMBASSADOR DR. NABIL EL-ARABY, AGENT OF THE EGYPTIAN GOVERNMENT

(PAGES 798 - 846)

الملحق الثالث ـ الشق (ب)

مستخرج من

المضبطة الرسمية لوقائع جلسات هيئة التحكيم

اجتماع يوم ١٢ ابريل ١٩٨٨ ـ الجلسة الصباحية و المسائية

مرافعة البروفسور دريك باوت خلال المرحلة الثانية فيما يتعلق بعلامة الحدود الاخيرة المتنازع عليها رقم ٩١ مع الكلمة الختامية للسفير الدكتور نبيل العربي بوصفه ممثل الحكومة المصرية

(الصفحات ٧٩٨ ـ ٨٤٦)

Prof. Bowett: Mr. President, Members of the Tribunal, I deal, at this stage, with Boundary Pillar 91. I am sure the Tribunal will have been undergoing the same exercise that we have been doing over the last few days, trying to piece together the various pieces of evidence relating to the location of Boundary Pillar 91. Mr. Lauterpacht described this exercise as rather

like a detective story. I think my simile would be more that of a jigsaw, and frankly we have been trying to fit together the various pieces of this jigsaw and only now do we feel, with some confidence, that we have the true picture.

The difficulties faced by [Egypt] in fitting together this jigsaw have been compounded by three different factors. The first was the lack of many of the early materials in Egypt's own archives. As the Ambassador has said, under the 50-year rule much of those materials were destroyed. And so for the original 1906 map we had to go to the Turkish Government. For the Newcombe Survey of 1912-1913, we had to go to the British Library in London. And much of the other material, the data on the Wade survey or the 1911 survey, we have simply not been able to find. So that was the first difficulty.

The second difficulty has been Egypt's absence from this site, an absence from 1956 onwards. You will remember that the Agent for Egypt has explained that, between the years 1957 and 1967, because of the presence of UNEF on the ADL and the international frontier, Egypt retired some five kilometres behind the frontier. And, of course, after 1967, after June '67, until this very date, Israel has been in complete occupation of the site. So that is the second factor.

The third factor which has added to our difficulties has been Israel's deliberate concealment of important evidence. Not merely the evidence about the removal of the Parker site, the site on which the Parker Pillar was located, that we [PVR 34] learnt about only in [Israel's] Counter-Memorial, but the concealment of the evidence of the destruction of the original Boundary Pillar 91(E). That we now know, and again only by inference, from the testimony which we have heard during the course of these proceedings.

But gradually these difficulties of proof have been cleared away -- we have a saying in English "the truth will out" -- we believe that the truth has now come out and we now all have a better understanding of what actually happened. We have to some extent been assisted by the evidence of witnesses produced by the Parties, and I refer specifically to the evidence from two of the witnesses produced by Israel, Mr. Yigal Simon and Mr. Rushworth. Egypt is perfectly willing to accept such parts of their evidence as carry the ring of truth, and I will in due course indicate which parts of that evidence Egypt, in fact, believes to be true. So my purpose now is not to simply repeat the arguments which were addressed to the Tribunal in phase one, I shall review and re-assess those arguments very briefly, but in the light of the evidence, of all the evidence, which we now have.

So, Mr. President, let me start with Israel's positive case in support of Boundary Pillar 91. This is Israel's positive case. Of the two locations originally advanced by Israel, we can now, in my submission, ignore Bir Taba. We can ignore Boundary Pillar 91(I)(west), simply because Israel offers no evidence, Israel relies entirely on its written pleadings, and I submit to you that, in effect, Israel is now abandoning that location. So we are left with Boundary Pillar 91(I)(east), not the Granite Knob but the western lower end of the Granite Knob. I suggested to you in the first phase that Israel's evidence consisted of some seven rather flimsy strands of evidence, and I want to briefly review those now in the light of all the evidence we now have, but adopting a slightly different order. I will, if I may, leave the intervisibility argument to the end. [PVR 35]

Let's take the first strand of evidence, the evidence of a so-called frontier cairn on the beach at Taba as shown in this 1936 photograph. Mr. President, this is not a serious argument. In any event the frontier cairn, so alleged, is not coincident with Boundary Pillar 91(I)(east). You may recall Mr. Rushworth's evidence on the afternoon of 24 March, at page 46. He clearly did not know what to make of this photograph. Let me just remind you of the exchange between Mr. Lauterpacht and Mr. Rushworth:

> "Mr. Lauterpacht: Now do you feel able to say what the object is?
>
> Mr. Rushworth: Well it looks like a pile of lumps to me or I wouldn't like to -- it may well be rocks. Perhaps a pile of rocks is what it looks most like.
>
> Mr. Lauterpacht: A pile of rocks? Could it be a camel?
>
> Mr. Rushworth: I think not. I mean it is difficult to say, but no I don't believe its a camel, no.
>
> Mr. Lauterpacht: Could it be a cairn?
>
> Mr. Rushworth: Well it could be, it is not a very good shape for a cairn, but it could be a cairn.
>
> Mr. Lauterpacht: Well for the sake of the record, how would you describe its shape?
>
> Mr. Rushworth: It's near to a pyramid.
>
> Mr. Lauterpacht: Near to a pyramid. But what do you think that white mark on it is?

Mr. Rushworth: I have no idea -- "

That, Mr. President, is the evidence we are now iven from Israel's own witness about this so-called rontier cairn. Apparently the only virtue of this rontier cairn is its alleged intervisibility with oundary Pillar 90. We do not accept that this cairn, f it ever existed, was intervisible. We do not accept he whole argument of intervisibility. And we do not ccept, and cannot accept, [PVR 36] this is any serious vidence at all. So that is the first of these strands f evidence.

I turn now to the second. This is the Meistermann hotograph of 1909, supported by Baedecker's Guide. low Israel adheres to this. You will remember that Ir. Lauterpacht argued: first, the photograph was taken t Taba; second, the soldiers shown on the photograph ere Turks; third, that they could not be Egyptian oldiers because there was no Egyptian post there in aba until 1914; fourth, the conclusion, therefore, is his clear evidence of Turkish presence in the Wadi.

Well that is the argument, Mr. President, but I hink that Mr. Lauterpacht overlooks a number of rather mportant points. The first is that the photograph hows Dom palms near the fort. There were no Dom Palms t the Granite Knob, Mr. President. The only Dom Palms ere at the site in the Wadi which Israel concedes to e Egyptian and always to have been Egyptian. econdly, the fact that there was no permanent Egyptian ost until 1914 is not conclusive at all, because lthough there was no permanent post, Egyptian patrols id visit Taba. There could well have been Egyptian oldiers in Taba even though they were not permanently osted there. Third, and even more important, even if e assume that the soldiers shown in the photograph ere Turkish, it doesn't help Israel's argument, ecause Mr. Lauterpacht overlooks Article 6 of the 1906 greement. Article 6 of the 1906 Agreement says, "Turkish soldiers shall benefit by the water which emained west of the Separating Line." Now Mr. President, what that means is quite simply that lthough we had the Separating Line, under Article 6 of the 1906 Agreement, Turkish soldiers were given the right to come into the Wadi and draw water from the well. So they could have been Turkish soldiers drawing water from the well as of right under Article 6, and heir presence in the Wadi does not at all signify that here was any kind of permanent Turkish [PVR 37] presence in the Wadi. And, lastly, Mr. President, it really is beyond belief that if Great Britain had been prepared to threaten war against Turkey in 1906 to get the Turks out of Wadi Taba, that within three years, by 1909, the British would have agreed to allow the Turks back into Wadi Taba. It simply is not credible.

I turn now to the third of the strands of evidence, the Egyptian Statistical Yearbook of 1909. Israel continues to place great weight on this one publication. Egypt concedes that there was an error in that Yearbook in the very first issue describing the easterly terminal point of the boundary. But first, this was the very first issue, the very first Statistical Yearbook attempted by the Egyptian Authorities and if you look at the Preface to the Yearbook you find a rather charming apology for the tentative and incomplete nature of this statistical collection. [Tape No. 183] The Director of the Statistical Department in his preface talks about the difficulties which have had to be overcome in order to bring the present compilation to a satisfactory conclusion and he goes on "the Statistical Department would be the first to admit that it does not, unfortunately, contain all, or nearly all, the information that such a work should contain. Our readers are therefore asked to remember that this is a first attempt and it is hoped to add to each succeeding edition new chapters and to fill in little by little the lacunae which are to be found here."

Now it is clear that the section entitled "Territory and Climate" -- and that is the section which carried this erroneous description of the terminal point of the boundary -- was a section written without assistance from the Survey Department of Egypt. I say that is clear because in another [PVR 38] section, the section on "Meteorological Observations" there is an express acknowledgement by the Statistical Department of data having been provided by the Survey Department. But here, in this section, there is no acknowledgement of any data being provided by the Survey Department.

My guess is, Mr. President, that there was in Cairo a young man, a young statistician, who was obsessed with the need for precision. He felt he had to give a precise location for this terminal point. He had to give precise coordinates for this terminal point. Of course there were no coordinates in 1909 for any of the pillar locations. None of them were triangulated. None of them were coordinated. So the young man in his zeal for precision found coordinates in Wade's survey and what he found, of course, were the coordinates that Wade had used for the astronomical point B.1. So he seized on those to give him the kind of precision which in his enthusiasm he felt was necessary. He was wrong -- he was wrong about other things too -- you will find in the same Statistical Yearbook a description of some of the ports of Egypt. There is a description of the Port of Alexandria. Listen to it: "Alexandria, which is situated on the Mediterranean Sea" -- that's right -- "latitude 31 degrees, 11 minutes, 43 seconds north, longitude 29

degrees, 51 minutes, 44 seconds east. Ras El-Tin lighthouse". Now, there is a Ras El-Tin lighthouse in Alexandria, but it is not all of Alexandria-- Alexandria is a much bigger place -- but in his enthusiasm for precision he gives you precise co-ordinates of a lighthouse and then identifies it with Alexandria. In exactly the same way as he seized on the precise coordinates for the Granite Knob, B.1, and identified it with Taba. He does the same with Suez. "Suez lies at the Red Sea end of the Canal. Latitude 29 degrees, 58 minutes, 15 seconds north, longitude 32 degrees, 33 minutes, 18 seconds east. Khedivial Chalet!! Well, there may be a Khedivial Chalet at that precise latitude [PVR 39] and longitude, but that is not Suez. Suez is a much bigger place. So this is the kind of error which the young man made out of an excess of zeal and, as we know, that error was corrected in the very next edition which had the advantage of assistance from the Survey Department.

Now the fact that Israel relies upon a document of this kind is, in my view, a reflection of the weakness of Israel's case. For Israel to have to place so much weight upon this one publication, containing an error by a minor official and corrected in the very next year and never ever repeated is a very clear reflection on the weakness of the Israeli case. There is, if you will forgive me quoting it, Mr. President, a rather interesting observation upon technical publications of this kind in the Rann of Kutch award. In the Rann of Kutch award, the award was dealing with a number of rather technical publications and the award at page 565 says this:

> "The Bombay Administration Reports and the Gazetteers of the Bombay Presidency contained a mass of information on various topics relevant to the administration in the years to which they related, as well as on topics of general interest. They were not administrative acts but encyclopaedic reference books. The passages relied upon in these proceedings occurred in lists of area statements included in those books. In the more relevant Statistical Abstracts, the reservation that the Rann was Kutch territory appeared in the form of footnotes referring to the area of Kutch in a list of the areas of a great number of States. It is difficult to envisage a more insignificant form of government action than such a footnote."

There -- you have in that judgment, I think, a correct appraisal of the kind of probative weight, the value as evidence, of statistical compilations of this kind. [PVR 40]

Now Israel has compared Egypt's argument -- that is to say Egypt's, as it were, ignoring this one error -- with Egypt's argument relating to the trig lists; and Israel suggests that there is some inconsistency between these two positions. Not so, Mr. President. The Statistical Yearbook, the error in that Yearbook, was corrected in the very next year and was never, ever repeated. The trig lists describing Boundary Pillar 91(E) as a Boundary Pillar were not only correct from the beginning, they were never changed and they were in fact corroborated right through from the 1931 letter to Dr. Ball's survey in 1940 through to the trig lists No. 144 in 1941-45 and finally in 1960 in the letter from General Hilmy. So there really is no comparison. There is no analogy at all between Egypt's treatment of the Statistical Yearbook error and Egypt's reliance upon a correct and never corrected recital in those trig lists.

So that brings me to the fourth strand of evidence -- the alleged Turkish gun in Wadi Taba in the year 1913. Mr. President, we have no further evidence of this -- we have one report of a mere rumour. Now of course Mr. Lauterpacht suggests to you that it is a report which must be given credence. I hope that the Tribunal will bear that in mind when they come to assess the value of the <u>Monitin</u> report about the destruction of Boundary Pillar 91. That, too, must be given credence. But there is a difference because the <u>Monitin</u> report, about the destruction of Boundary Pillar 91, is in fact corroborated by the evidence of Israel's own witnesses. I refer to the testimony by Mr. Yigal Simon in which he told the Tribunal, in all frankness, that when he was there, in 1966-67, he saw a complete Boundary Pillar at the location of 91(E). Now the Egyptians were not there thereafter, only the Israelis were there. The conclusion must be that only Israel could have destroyed that pillar. That exactly corroborates the <u>Monitin</u> report. [PVR 41] As for the supposed gun, as I say we have no evidence, except for perhaps one thing -- the Tribunal now knows that there was a careful, competent survey of Wadi Taba in the years 1912-1913 by the Newcombe survey team. Curious, isn't it, Mr. President, that this competent team of surveyors failed to notice a large Turkish gun in the Wadi? Again, curious that the British, who had been so keen to expel the Turks from the Wadi in 1906, by 1913 would allow the Turks not only to come back into the Wadi, but to bring a large field gun with them. I suggest to you that the evidence is without any kind of value at all.

Then we have the fifth strand of evidence, or argument perhaps -- the strategic argument on which with one exception, we have no new evidence. So it remains primarily a matter of argument. Egypt maintains that the record clearly shows that the

British insisted on controlling the whole of Wadi Taba; they insisted on complete evacuation of the Wadi by the Turks because the British believed that control of the entire Wadi was essential to their control of the head of the Ras el Naqb further north. But there is some new evidence in the sense that we have evidence by both General Hamdy, on behalf of Egypt, who you will remember was there in 1949 and 1950, and also evidence by Mr. Yigal Simon who was there in late 1966-67. Their evidence, remember, suggests that in the Wadi there were Egyptian patrols, Egyptian minefields, and that Egypt controlled the whole of the Wadi. They both agree on that. The Israeli positions, as Mr. Yigal Simon told us, were east of the Wadi and they had some sort of a minefield there but they were never, ever in the Wadi itself prior to the occupation after June 1967. Now that evidence confirms the view that the control of the entirety of the Wadi not only was regarded as necessary in 1906, but remained absolute, remained entirely in Egyptian control, right until June 1967. Now that's the strategic argument. [PVR 42]

The sixth strand of evidence lies in the maps, and I think it's fair to say that Israel's case now really depends upon two maps -- these are the Owen and Wade maps attached to their Reports in 1906; they're the maps in your folder at Nos. 12 and 14. Now, for Israel these two maps have two virtues. The first is that they are post-demarcation, the second virtue is that they show the boundary line terminating at a triangle which is an astronomical station, which is either A.1 or B.1. In fact, of course, on both maps, the line meets the triangle tangentially on the right-hand side of the triangle, so on the scale of those maps, the line could well be, even on those maps, some 500 metres east of A.1. Now frankly, Mr. President, we say that both these maps are on so small a scale that they really give to the Tribunal and to the Parties no assistance whatever in locating Boundary Pillars. They show virtually nothing. What is interesting is to look at the maps which Israel does not like -- the contemporary maps of the same period which Israel does not wish to rely on.

Now that is an interesting exercise and it is interesting to see the reasons why Israel does not like the other contemporary maps of the period. Israel does not like the authentic Turkish map provided by the Turkish Government. Now why? Well, firstly because the boundary line is shown to run well to the east of the triangle. Quite clear of the triangle. Secondly, she does not like the map because it is a pre-demarcation map, i.e., a map drawn before the actual location of the Boundary Pillars was decided upon. But to that I think there are two things to be said: first of all, and most obviously, the line on the authentic Turkish map is Egypt's line, not Israel's.

It supports the Egyptian position. And secondly, those Turkish Commissioners when they embarked upon the demarcation must have had with them not merely the copy of the 1906 Agreement in the one hand, but in the other surely the authentic Turkish map. [PVR 43] It must have been their guidance, virtually their bible, when it came to locating the Boundary Pillars. It is inconceivable that those same Turkish Commissioners would have agreed to a location of Boundary Pillars inconsistent with the authentic Turkish map.

So that is one map that Israel does not like. Another map they don't like is the Egyptian 1906 map which is in your folder at No. 22. Why again? Because the line runs to the east of the triangle. And then Israel also adds another observation, the point of which is really rather difficult to grasp. Israel says that in any event the line shown on the 1906 map is contrary to Egypt's position because the line does not terminate at 91(E), it runs onto the coast. That's the observation made. The line does not terminate at 91(E) it runs onto the coast. But of course, Mr. President, Egypt has never suggested that the boundary line finishes at 91(E). Of course the line goes onto the coast. There was never intended to be an undelimited, undefined part of the boundary, between the final pillar wherever it might be, and the actual coast. The boundary line went straight to the sea-- it continued right into the sea and left no part of the land undelimited. We have always assumed that the boundary ran right through to the coast.

Then there is the British 1907 map, in your folder at No. 19. Here too Israel does not like this map because the line again lies clearly to the east of the triangle and we have an explanation of this given by Israel. Mr. Lauterpacht on the 23rd of the Month -- in the morning -- said the reason why that would be so, why the line missed the triangle, is that the draughtsman wanted to avoid obscuring the triangle. That's why it passes by to the east.

Then we have the Rushdi map of 1909 -- again Israel does not like it because the line goes well to the east of the [PVR 44] triangle. And now, in relation to this map, it's in your folder at No. 19, we have a new argument. Mr. Lauterpacht seizes on the words in Arabic -- "Ras Taba" -- and on that map -- it is folder No. 15 -- those words in Arabic "Ras Taba"-- Mr. Lauterpacht says that they locate Ras Taba at the promontory which lies seaward of the Granite Knob. Well, Mr. President, in Arabic the words run from right to left, not left to right, right to left, so that the order of those words is Taba Ras and the second word, the Ras, actually lies exactly opposite the promontory beyond Boundary Pillar 91(E). It is

where the cliffs reach the sea. That's the Ras and not the other word which lies further to the west.

Then we have Egyptian map of 1911, in your folder at No. 23. Again Israel does not like this map because again the line runs well to the east of the triangle. And again we get the same argument that the line does not terminate at BP 91(E) -- it goes on to the coast. Of course, Mr. President, we have never suggested otherwise.

So in sum, if you look at the Israeli case on the maps they rely on two of the smallest maps really because the line on those maps appears to meet the triangle. They ignore all the other maps. They reject all the other maps. For two reasons, one is that where the line misses the triangle this is because the draughtsmen didn't want to obscure the triangle-- what's the logic of that? I mean, if where the line meets the triangle the maps are marvellous, how can you say when the line misses the triangle that the reason why it misses the triangle is that the draughtsmen didn't want to obscure the triangle? If he could meet the triangle exactly on one map, why couldn't he meet it exactly on the other maps without obscuring the triangle, [PVR 45] [Tape No. 184] if that is really the true depiction of the boundary? It really doesn't make any kind of sense. And as for the second argument, that the line goes to the coast and does not terminate at BP 91, we have never suggested otherwise. Now that's Israel's view of what I would call the contemporary maps.

When we come to the later maps, the 1915 map and all the later maps, which are or are alleged to be derived from that map, then all those maps are dismissed by Israel because of this allegation of an error in the compilation of the 1915 map. I'll come back to that in some detail later on, but that is the reason why Israel rejects all the 1915 and post-1915 maps. There's one group of maps about which Israel has very little to say and that is Israel's own maps, both pre-1982 and post-1982. Israel has not yet given to the Tribunal any satisfactory explanation as to why the pre-1982 maps should support entirely the Egyptian position, but the post-1982 maps of Israel should show a radical change in the location of the boundary so as to support the new Israeli claim. No satisfactory explanation of that change in the maps has yet been given to the Tribunal. There's been a comment by Mr. Sabel which I'll refer to in a moment, but that comment is not, I repeat not, a satisfactory explanation.

So, Mr. President, that brings us to the last, the seventh, strand of the Israeli positive case, the argument of intervisibility. Assuming Israel still has

a positive case, and I'm by no means sure of that, intervisibility seems to be the core of that case. Nothing in the evidence we have heard has caused Egypt to change its mind about this criterion of intervisibility. We say, first that it was simply an aim of the 1906 Agreement. It was never intended as an absolute condition -- as a required condition for each and every Boundary Pillar. Indeed, it's clear that when the Treaty was [PVR 46] drafted, the draughtsman, in drafting the Treaty, simply did not know whether intervisibility could be achieved or not. We know that over the northern sector, the sector from Rafah to Gebel Fort, intervisibility was not achieved. We have Wade's journal which tells of the difficulties he encountered in the area near A.11. We know there is no intervisibility between A.9bis and A.10bis. We know from Israel's own expert, Mr. Beazley, that the Parties simply could not have expected intervisibility to last, even if they had achieved it in 1906, because with the wind and the weather and the change in the formation of sand dunes or the growth of vegetation, intervisibility could not be expected to be maintained.

Commander Beazley was produced as an expert by Israel. I had supposed to give evidence to show that intervisibility was observed and was an absolute condition. But in fact, what did Commander Beazley actually tell us? What he said in sum was this: between BPs 5 and 6, he couldn't say; between BPs 8 and 9, he accepted intervisibility does not exist; between BPs 13 and 14(I), intervisibility was achieved, but only by using a long pole which was some one and a half metres higher than the height of the masonry pillars; between BPs 14(I) and 15(I), again, he couldn't say; between BPs 35 and 36, he accepted that there was no intervisibility; between BPs 76 and 77, again he accepted there was no intervisibility; and on the portion between original BP 1 and the old 2A, he did not disagree with my suggestion that the new 2A is located some 50 metres away, precisely because there was no intervisibility between the old 2A and BP 1. So, even in the northern sector, on the evidence of Israel's own expert witness, you get a rejection of the thesis that intervisibility was an absolute condition.

When we come to the crucial sector, the southern sector, between Gebel Fort and the Gulf itself, then the evidence is entirely against intervisibility. We know that the Demarcation Commission were carefully following the treaty text, and if you examine the [PVR 47] demarcation exercise and the treaty text as it relates to the geography, it becomes absolutely clear what was happening on that demarcation exercise in late 1906. The evidence is clear. The Commissioners were following the treaty text. Wade, the surveyor, does not mention intervisibility at all over the last three pillars. Now, of course, Israel argues that there is a

presumption that there is intervisibility -- that intervisibility is required. Therefore, says Israel, if there is no mention by Wade of intervisibility, this must mean that intervisibility is achieved because that is the presumption. But, Mr. President, if that is so, why do we get these frequent references to intervisibility being achieved elsewhere along the boundary? Surely, if there was this presumption and no need to mention it being achieved, why was it mentioned many, many times by Wade in the more northerly part of the boundary? The argument simply doesn't convince.

Now, I suggested to the Tribunal that not only was the boundary demarcation commission closely following the geographical description of the line as they came down the wadi, but it was frankly ludicrous to expect them to climb those massive cliffs and build these little pimples of masonry pillars upon the top of these massive natural features. If you look at the treaty text and then apply that to the geography, you remember the crucial phrase in Article 1, "passing by the summits of the mountains laying east of and overlooking, overlooking, Wadi Taba"; and in Wade's Journal for 18 October, after he's passed pillar no. 88 (and I'm using the 1906 numbers), he says "then two more along the line of east cliffs of Taba and one at the point where they strike the Gulf". Now, Egypt says without any hesitation that the geography can only be made to fit that description, those texts, on one hypothesis and that is, that in 1906, the three pillars Wade referred to after passing 88 were: 89 (which of course is now the agreed 90), BP 90 (the one identified on the Beadnell photograph and what was later [PVR 48] 91(E)), and then last of all, the Parker Pillar (BP 91 so termed in the year 1906). This is the inevitable conclusion. It's only along that line that you follow the summits of a line of these cliffs and overlook Wadi Taba

And the Tribunal has looked, as I'm sure we have many times, at the Israeli photographs -- not only photograph No. 3 which is No. 6 in your folder, but also the aerial photographs, No. 8 in your folder. And there you see the silhouette, the line of cliffs absolutely clearly. All that Parker needed, all that was needed for the final pillar, was to indicate where the east cliffs strike the Gulf. The target was Ras Taba, where those cliffs, the east cliffs, strike the Gulf. That is what the Parties meant in 1906, that is what they understood on the demarcation exercise. Not the Granite Knob, Mr. President. And you have confirmation of this in Wade's original sketch which I think it might be useful to look at. It should be the last thing in your folder, it's the illustration added by Egypt today. It's not numbered because it is the very last one in your folder. We're looking at the sketch called "Wade's topographical sketch map" of 1906

and this is the signed copy, the copy which is actually signed by Wade. Now, if you look right at the bottom, you will see that Wade draws in the line of cliffs to the east of Wadi Taba and you will see where he puts the word "Taba". Taba for him lies clearly to the east of A.1; Taba for him lies at the foot of the east cliffs. Therefore, Ras Taba for him was essentially where those cliffs reached the sea. That was Ras Taba and not the Granite Knob.

Now, Mr. President, the discussion of Wadi Khadra is really almost totally irrelevant. Wadi Khadra was not mentioned by Wade and on the scale of the entire Wadi Taba, this little Wadi Khadra running in from the east is insignificant. It could not affect what the Commissioners [PVR 49] viewed as the line of cliffs to their left as they came down Wadi Taba. And of course, remember that in 1906, they didn't have the benefit of aerial photographs so they were not able to see, as it were from on top, whether there was a break in the continuity of the line of cliffs. Coming down the Wadi, those cliffs look to be continuous. And of course, they were continuous anyway along the watershed.

Now, we get quite remarkable confirmation of Egypt's view of the correct 1906 boundary line actually in Mr. Rushworth's evidence. There is a passage for 24 March in the afternoon, at pages 95 to 96, and you will remember that Mr. Lauterpacht was asking Mr. Rushworth how the British map constructor in London in 1915 would have placed the boundary on the 1915 map. Now of course the field plots wouldn't show the boundary. They would show the topography, but they wouldn't show the actual boundary line. So, having completed what was a very good map, it remained for the map constructor to place the boundary line on that map. And Mr. Lauterpacht asked Mr. Rushworth how the map constructor would have done this -- what information he would have used. Mr. Lauterpacht said "What information would he have had available to him to assist him to get, let us say from 89 then to the terminus that he marked?" -- that is, the boundary. Mr. Rushworth replied: "As far as I am aware, the likely thing is that he would have had Owen's and Wade's Reports, since those were readily available and of course the maps that went with them. He may have had also Wade's larger scale maps." So in 1915, you get a British map constructor, using the Wade and Owen Reports, the Wade and Owen maps on which Israel relies so heavily. And when the British map constructor draws the boundary line on the map, he draws exactly Egypt's line. You could not get a clearer confirmation of the correspondence between the Egyptian version of the correct boundary line and those original 1906 sources than you get from Mr. Rushworth's account of exactly

how the map constructor in 1915 located [PVR 50] that line on the map.

I suggest to you, Mr. President, the geographical thesis which Israel advances is really quite untenable. Their line does not only not follow the line of east cliffs, it doesn't actually follow anything. And of course in striving to reach the Granite Knob, the Granite Knob is not part of the east cliffs. It's separated from them, as we know, by more than 200 metres -- the entirety of the hotel site separates the Granite Knob from the east cliffs. The whole of this area is part of the mouth of the wadi and certainly the Granite Knob is not where the east cliffs strike the Gulf. Neither Wade nor Owen ever mentioned the Granite Knob and B.1, which is on top of the Granite Knob, is simply not listed in Article 1 of the 1906 Agreement as a boundary point. The Granite Knob was simply never the target to which the demarcation commission was aiming in 1906 and indeed the Granite Knob could not be the terminus of the boundary, no more than BP 91(E) could be the terminus, because both Parties would accept that the boundary would go on to the sea. More than that, the intervisibility theory and the whole idea that you use the Granite Knob as a target because only with that feature do you gain intervisibility, this doesn't fit with the agreed location of agreed Boundary Pillar 90 because, if the Granite Knob was the target and if you can see the Granite Knob from Boundary Pillar 89, why do you want Boundary Pillar 90? It's not necessary; you can go straight to the Granite Knob. Even if you say well, that's rather a long stretch so we'll just put in another pillar just to make sure, why not locate Boundary Pillar 90 where it was intervisible with the Granite Knob? But they didn't do that. You can't actually see the top of the Granite Knob from Boundary Pillar 90. If they wanted to maintain intervisibility, they'd have moved Boundary Pillar 90 over a bit so they could see the top of the Granite Knob. So, the intervisibility thesis simply doesn't fit. [PVR 51]

Now, Mr. President, apart from the geography, apart from the treaty text, there are in fact three, I think, fatal flaws in the Israeli thesis. The three fatal flaws which destroy the Israeli thesis beyond any shadow of doubt are, first of all, the numbering of the pillars. Let us assume, as I think we must, that there were 91 pillars in 1906. Now, in 1906, the present BP 90 was numbered 89. Now, using the 1906 numbering, let us follow down the Israeli line. We get, by 1906 number 89, and then we move directly to Israel's Boundary Pillar 91(I). But, that must mean that on Israel's numbering, BP 90, the present BP 90, was the penultimate pillar. So, on Israel's thesis, by 1906 numbering, you move straight from what was 89 to the last pillar. So Israel's last pillar, by 1906

numbering, can only be 90. The question is, where is Israel's last pillar by 1906 numbering? Where is Israel's boundary pillar 91? [Israel] doesn't have one, because [Israel's] only got one pillar after what was then 89. Now, of course, Egypt does not have that problem because Egypt's thesis does fit the numbering and now that we know that Parker was a different pillar, different from BP 91(E) and in fact the final pillar, because under Egypt's thesis, we move from, on the 1906 numbering, 89 to 90 (that's the Beadnell [pillar], what is now 91(E)), and then we move to 91 which is Parker. So our thesis fits the numbering. There is no way in which the Israeli thesis can fit the 1906 numbering of the pillars. So, that's the first of these fatal flaws in the Israeli thesis. [PVR 52, [Tape No. 185]

The second fatal flaw is of course the existence of the Parker Pillar. Not merely as a matter of numbering. Israel argues that the Parker Pillar was there in 1906 through 1913 and certainly they argue it was there between the years 1949 and 1951. The whole thesis is, of course, that it was wrongly located. It was put in the wrong place. Now, that thesis of the wrong location of the Parker Pillar is totally untenable and totally unproven. It is simply beyond belief to imagine that within two and a half months after correctly locating the telegraph poles, the same people, the same Commissioners, would come along and erect the masonry pillars in a different place. That thesis is beyond belief and Israel has made no serious attempt to prove that any such error in the location of the masonry pillars has occurred. Mr. Rushworth, in his evidence, accepted that such an error was improbable. We say it is impossible. Now the importance of that is this. If the Parker Pillar was correctly located, the Israeli intervisibility thesis is totally destroyed. Why? Because even Israel would concede that, with or without 91(E), there simply could not be intervisibility between Parker and BP 90. So the existence of Parker totally destroys the intervisibility thesis, the main core of the Israeli positive case.

That brings me to the third flaw in the Israeli thesis. Now the Israeli thesis is simply inconsistent with what we know about the history of the Taba incident of 1906 and about the extent of the British strategic interest in retaining possession of the whole of Wadi Taba. The thesis of a boundary line down the middle of the Wadi, dividing the Wadi between the Turks and the Egyptians, is simply incredible in the light of the very clear evidence that Britain insisted upon getting the Turks out of the Wadi Taba. In strategic terms, Britain saw the axis, the line from [PVR 53] Ras el Naqb in the north down to Taba, as the line along which Britain would command the approaches to Aqaba or,

if for defence purposes, the approaches from Aqaba into Sinai and onto to the Canal. Now, whether or not the route up Wadi Taba, up to the Ras el Naqb, was passable or usable by motorized traffic is entirely beside the point. The point was that it was already passable, or believed to be passable, by foot soldiers, and any competent corps of engineers, even in 1906, could have made that route passable. It was therefore regarded as an essential element in the British strategic view of the importance of Wadi Taba.

So, Mr. President, to conclude on the Israeli case we would say that the Israeli case on BP 91 is not only untenable, but is in fact, in our view, not a bona fide case. It is so unlikely, so contrary to the evidence, that we think it implausible to believe that Israel has ever seriously believed in that positive case. On the contrary, we believe that Israel has no expectation of a finding, of a positive finding, by this Tribunal for BP 91(I). The whole of Israel's hopes rest on the Tribunal returning a non liquet and that is the Israeli case.

Mr. President, I think this is probably a good time to stop.

The President: Yes. So, we adjourn until three o'clock. By the way, what has happened with these letter and a sketch? Have you got it now?

Mr. Elaraby: Mr. President, we don't have the papers attached to that letter or otherwise we would have submitted it. We have already cabled Cairo, as soon as it is there, if they ever find it, we will provide the Tribunal and the other side with it. But had we had it in the first place, we would have submitted it of course. The sketches have already been distributed, I mean the Wade sketch. [PVR 54]

The President: Yes, but this sketch attached to the letter?

Mr. Elaraby: Yes, but we don't have it, Sir, otherwise I would have given it to the Tribunal a long time ago.

The President: And the rest of the letter?

Mr. Elaraby: We had the letter, we submitted it to the Tribunal. We cabled Cairo, if they find it, as soon as they find it, if ever they find it, we'll furnish the Tribunal with it.

The President: Because we received one page of the letter.

Mr. Elaraby: Yes, Sir, I know.

Mr. Lauterpacht: Mr. President, as you are raising a question about the availability of new materials, may we ask when we can expect to see the original of the document which has now been circulated as the unnumbered final document?

The President: This has just been received by our Registrar. We have got it now.

Mr. Lauterpacht: We would be grateful if our experts could look at it at your convenience. Thank you.

The President: Thank you. We will meet again this afternoon at 3h00.

Verbatim Record of the Hearing

Tuesday, 12 April 1988

Afternoon Session

[PVR 1] [Tape No. 186]

The President: The Hearing is resumed. May I call upon Professor Bowett?

Prof. Bowett: Thank you, Mr. President. Mr. President, I now turn to the Egyptian case on Boundary Pillar 91. I don't need to go into all the details. I shall simply summarize that case.

We say that Egypt's case is consistent, first of all with the treaty text. In other words, Egypt's line would accord with the treaty description and the location of the pillars would conform with that description.

Secondly, we say that Egypt's locations are consistent with the record of the demarcation and, if we allow for Parker as the final pillar in 1906, Egypt's case then accords with 1906 numbering of the Pillars. Now that we have -- by 1906 numbers, 89, 90, (which is now 91(E)), and Parker as 91.

Thirdly, we say that our positions are consistent with the whole object and purpose of the 1906 Agreement, specifically with the aim of securing the whole of Wadi Taba for Egypt and excluding Turkey. [PVR 2]

And, fourthly, we say that the Egyptian positions are consistent with the map evidence.

Now the map evidence, Mr. President, is important as I said in the first round, precisely because we have so little evidence of concrete acts of sovereignty on the ground.

<u>The President</u>: Professor Bowett, may I ask you, you are saying that in 1906 there were two pillars at Ras Taba? Is that your [intention]?

<u>Prof. Bowett</u>: That is so, Sir.

<u>The President</u>: That's so. Thank you.

<u>Prof. Bowett</u>: The map evidence is a major controversy in this case and I think it's perhaps still necessary to review this evidence rather carefully. As I've shown this morning, Israel relies almost entirely on the two contemporaneous maps, the Wade and Owen maps of 1906. Really for the reason that they show a line meeting that little triangle, the astronomical point. We say that those maps are really much too small to be conclusive and, in any event, we say further that Israel simply ignores the sketches by both Owen and Wade and those are sketches to which we attach importance.

Owen's own sketch map, which is in your folder at number three, is simply inconsistent with Israel's version of what the maps show. If you look at Owen's sketch map in folder number three, you will see that Owen's line does not go down the wadi. On Owen's sketch, the line follows the line of hills and it reaches the coast where Egypt says Ras Taba was understood to be.

If you look at Wade's sketch -- that's number 13 in your folder -- there you see only one triangle and that is clearly A.1 and the line is well to the east of A.1 and runs along the [PVR 3] cliffs.

Now all the other pre-1915 maps support Egypt. We have the authentic Turkish map (number 21 in your folder), the Egyptian map of 1906 (which is number 22 in your folder), the British War Office map of 1907 (number 17 in your folder), the Rushdi map of 1908-9 (number 15 in your folder), the Survey of Egypt map of 1911 (number 23 in your folder), and we have Shoucair's map of 1913 (number 18 in your folder). So I repeat, all the other pre-1915 maps support Egypt.

I think one should pay particular attention to the authentic Turkish map. This was the map provided by the Turkish Government and Israel does not challenge its authenticity. It's useful I think to look again at this map which is in your folder at number 21. So that's number 21 in your folder. This merits attention precisely because of its special status. This is the map which I suggest to you the Turkish Commissioners would have carried with them on the actual demarcation exercise. The important features are these. First that the line on that map clearly lies well to the east of the triangle A.1, that is to say well to the east of

the area, the site, which is now the site of the Sonesta Hotel complex. The line strikes the Gulf, not at any promontory beyond the Granite Knob, but at the promontory beyond where the line of cliffs reaches the sea. Beyond the location of BP 91(E). Nor does this map stand alone. It's reinforced by Rushdi's map, number 15 in your folder, and by the Shoucair map, number 18 in your folder. Both those maps too show that Ras Taba lies beyond 91(E). That's bearing in mind that of the two words in Arabic, Ras is the word to the right, the second word and not the first.

So that brings me to the British 1915 map. Clearly very important evidence, and Israel has vigorously challenged this map and with it, all the later maps which are derived from it. The reason quite simply, Mr. President, is that this [PVR 4] map, the 1915 map, shows BP 91(E) as a Boundary Pillar at an elevation of 298 feet on Egypt's location. It is, in short, fatal to Israel's case against BP 91(E).

Now the criticism of this map has varied. Initially, we were told that the map was distorted due to the machinations of Lawrence of Arabia. That criticism seems to have now been dropped. The later criticism was that the map was inaccurate because there had been no survey. That too, has now been dropped. Israel admits that there was a survey, the Newcombe Survey, in 1912-13. Israel's own witness, Mr. Rushworth, describes the survey as a competent survey and the map as a good map.

We now have a new criticism of the map, developed in the course of these oral hearings, and through Mr. Rushworth, as their witness, Israel argues as follows: First, Israel says that the Field Plot X.1 made in 1912-13 shows two arrows. Second, they say that although the word alongside the arrows is the singular word "pillar", not "pillars" but "pillar", surveying practice would allow the use of the singular word accompanied by two arrows to indicate two different pillars. Third, they say that one arrow, the smaller of the two arrows, must have referred to Parker. Fourthly, they say that the larger arrow points to a marker which was not a true Boundary Pillar but which was a trig point at the elevation of 298 feet. And, fifthly, they say that the map constructor in constructing the 1915 map, made a mistake. He assumed that this monument was a Boundary Pillar and so marked it by mistake when in fact it was a trig point.

Therefore, the Israeli conclusion is that this marker at 298 feet, marked as Boundary Pillar 91, was wrongly identified on the 1915 map and therefore all later maps based upon this map are equally in error. [PVR 5]

Now I think, Mr. President, I fairly state the Israeli case. If not, they will certainly correct me. But we have reviewed the evidence given by Mr. Rushworth very carefully and our conclusion is that he may be correct, in his observations on the field plots, in the sense that there may be a second arrow. The significance of any second arrow remains unclear. The second arrow does not appear to refer to or point to anything. But to say that there was an error by the map constructor is a matter of entire speculation on the part of Mr. Rushworth for which there is no proof. In our view the theory of an error is unlikely and not proven. But in fact, Mr. President, it really doesn't matter. It doesn't matter for the reason that, even if you go along with Mr. Rushworth's premises, the conclusion he draws from those premises is absolutely wrong.

Now, let me just take you through his assumptions and then we'll reach his conclusion. Let us assume for the sake of argument with Mr. Rushworth that there were two arrows on the field plot X.1. Let us assume that in accordance with surveying practice you can treat the word pillar (singular) as nevertheless indicating two pillars, provided there are these two arrows. Let us assume further that a pillar on the Parker site still existed in 1912-13. Let us even assume that in 1912-13 there were two pillars, both a pillar on the Parker site and a pillar at BP 91(E). It does not follow from any of those assumptions, or all of the assumptions, that Mr. Rushworth's conclusion, that therefore BP 91(E) was only a trig point, is correct. We submit and believe it had been a Boundary Pillar, a true Boundary Pillar, ever since the year 1906 when it was originally located there.

Now, Mr. President, let me go through the reasons why we think Mr. Rushworth's conclusions are simply wrong. These are, I think, important to the whole case which Israel now argues. [PVR 6]

First reason. The map constructor in London in 1915 seemed to be primarily concerned to show on the map coordinated pillars. That is to say, pillars which had already been used for triangulation and which although they were true Boundary Pillars, nevertheless, because they were coordinated, could be used as trig points. In addition, he seems sometimes to have shown uncoordinated pillars but with elevations where these might be useful for contouring purposes in drawing more accurate contours on a map. Thus, he may have decided quite deliberately, not by error, quite deliberately not to show the Parker Pillar on the map. We know that Parker was uncoordinated so it couldn't be used as a trig point and indeed if he had also located the Parker Pillar on a map on this scale, it would have been about 2.2 millimetres away from the point on which 91(E) was

located. A very difficult thing to do in terms of cartography.

Now, Parker was not the only pillar not located on the map by the map constructor. That is equally true of agreed Boundary Pillar 90, that too is nowhere on the 1915 map. In fact, there were eight Boundary Pillars not shown on the 1915 map. These were numbers 42, 43, 44, 45, 46, 47, 48, and 90. The important fact is not that some pillars were not shown. The important fact is that the 1915 map shows no trig points actually on the boundary line which were not also true Boundary Pillars. I'll repeat that because it is important. The map shows no trig points actually on the boundary line which were not also true Boundary Pillars. So Mr. Rushworth's suggestion that this particular marker was marked as a Boundary Pillar by error is on its face unconvincing. This was not an error by the map constructor, confusing a trig point at 91(E) with a Boundary Pillar which was actually Parker. This was a deliberate policy decision by the map constructor. Indeed, it's difficult to believe that the proofs of this map on which so much time and effort had been spent -- think of all the intense effort that had [PVR 7] gone into the survey -- it is impossible to believe that this map would not have been carefully checked against the original field plots before it was finally printed and, of course, in any event it is the final printed map which is the authoritative map, not the preliminary sketches. So that's the first reason why we say Mr. Rushworth's conclusions are wrong.

A second reason lies in Beadnell's photograph. Israel accepts that the Beadnell photograph shows a Boundary Pillar then numbered 90 on the location of Boundary Pillar 91(E). Now just look at the terms in which Beadnell refers to this marker. I cite from Beadnell -- this is the Egyptian Memorial Annex 55. He says "I was able to tie my survey to the penultimate beacon the position of which was determined years ago by an international boundary commission". Now, the reason why he chose BP 91(E) -- then 90 -- was that it was already coordinated, triangulated where of course Parker was not. So, even if Parker had existed he would not have chosen Parker because it was not triangulated and could not be used for surveying purposes. So he chose the penultimate pillar precisely because he was engaged on a survey. He was a senior official of the Survey of Egypt and a very competent surveyor. But the really crucial phrase is that Beadnell, this competent surveyor, realized that that marker was a true Boundary Pillar. As he says, "the position of which was determined years ago by an international boundary commission". So he could not conceivably have been referring to a mere trig point. The positions of a mere trig point would not have been determined years ago by an international boundary

commission. So the Beadnell photograph is the second reason why Mr. Rushworth must be wrong.

Then there is a third reason. As the Beadnell photograph shows, this marker, the pillar at 298 feet. which was then BP 90, now 91(E), it was constructed from the outset like a Boundary Pillar. Not a trig point. In other words it was not a small concrete [PVR 8] cone but a masonry pillar constructed exactly like a true Boundary Pillar, masonry 2 metres high plus an additional 1 metre of iron flange at the top. It was always constructed as a true Boundary Pillar. And when in examination of Mr. Rushworth, I asked him if he could explain how between 1913 and 1922 -- between the Newcombe Survey and Beadnell photograph -- anyone could have transformed what was originally a trig point, a small trig point, into a full-fledged masonry-constructed Boundary Pillar, Mr. Rushworth was quite unable to explain how that transformation could have occurred. I asked him and I cite now from page 85 of the records for 24 March in the afternoon, "does that imply that at some time between 1913 and 1922 somebody transformed a small trig point into a permanent masonry pillar?" His answer: "Yes". I then said to him "why would they do that"? His answer was "I do not know". I do not know. And so you now have yet a third reason why the Rushworth explanation of the error is unconvincing. This is yet another element vital to Israel's argument upon which we have no proof. All we have is "I do not know".

Now I turn to the fourth and perhaps the most conclusive of all reasons why Mr. Rushworth's explanation simply cannot be right. [Tape No. 187] This is quite simply that Beadnell's penultimate pillar, the one identified by Beadnell as Boundary Pillar 90, but clearly by both sides accepted to be on the site of BP 91(E), that simply had to be a true Boundary Pillar because otherwise the numbers of the pillars don't fit. You may remember, Mr. President, that I asked Mr. Rushworth about the numbering of these pillars and his answer was that he hadn't particularly concerned himself with the numbering. Now that's very unfortunate because the numbering is very important, and indeed had he concerned [PVR 9] himself with the numbering of the pillars, he might well have realized before now that his theory of error was simply itself an error, a mistake. If we just think of the numbering in 1906, we have what was then Boundary Pillar 89. Then we have another monument, this is Beadnell's 90, or what Israel would say was a mere trig point. And then we come down to Boundary Pillar 91. So just look at the numbers: 89 down to here and then down to here; 89, 91. 90 is missing. There is a Boundary Pillar missing on that theory. In other words, this monument here, Beadnell's 90, the monument at 91(E), what Israel would say was a mere trig point, it had to

be 90, it had to be a true Boundary Pillar 90, otherwise you do not get the numbers 89, 90, 91. There is no other possible conclusion on the basis of the numbering.

Now, Mr. President, once we accept this explanation, in our view all the other pieces of evidence fall into place. The survey letter of 1931, Dr. Ball's survey card of 1940, the trig list of 1941-45. Of course, they all show BP 91(E). They all list it because it was not merely a Boundary Pillar, but fully coordinated as a trig point. They didn't show Parker, because Parker was too low to be of any use, the elevation was too low, to be of any use in triangulation. It had never been coordinated, and it was not a trig point. So you would not expect to find Parker on the trig lists, because it was not a trig point. You would expect to find BP 91(E) because it was first and foremost a Boundary Pillar, but also a trig point. Now the Tribunal will understand that with Parker, the Parker Pillar, never being mentioned or identified, either on the 1915 map, or on any subsequent maps, or mentioned in these various survey documents to which I have just referred, Egypt assumed that the Parker Pillar simply did not exist, at least after the years 1912-13. And of course, on this basis, on this assumption, the British 1943 map becomes absolutely clear.

I think, Mr. President, it is perhaps useful also to look at [PVR 10] this map. I would ask you to look at the map in the Egyptian Map Atlas, rather than your folder, for reasons which you will soon see. It is Map 10-1, in the map folder. Now, you see that on this map (10-1, the 1943 map), there is a monument marked as a boundary pillar, at an elevation of 91 metres. It is at the location advanced by Egypt for BP 91 and it is clearly marked as a Boundary Pillar. The Israeli thesis about this map is that you can disregard the map because the map incorporates the same error as vitiated the 1915 map. The Israeli thesis is that there was no independent or additional survey, ground survey, which went into the production of this map. Therefore, without further survey, they simply copied the '15 map and repeated the same error of identifying that monument as a Boundary Pillar when it ought to have been a mere trig point. Mr. President, we believe from our own independent enquiries, that the files show that there had been an independent survey. There had been a survey in the south of Jordan which was extended down to Taba and we believe that the surveyors correctly noted on this map exactly what they saw and what they saw was one Boundary Pillar at 91(E) and nothing else -- no sign of Parker.

Now Israel says that there is no evidence of an actual survey. Mr. President, just look at this map

rather carefully on its face. Just look again at 10-1. I am sorry to ask you yet again to open the folder.

Mr. Lauterpacht: Mr. President, forgive me again for intervening on a point of order. You have already heard the evidence which has been given by Professor Bowett. But I would take the immediate opportunity, Mr. President, of expressing an objection to it on the ground that what Professor Bowett has just said is entirely by way of evidence, is entirely new, has never been said before, and is not supported by any evidence already in the case. I will not elaborate on the point. But I merely wish to register the objection at this stage.

Prof. Bowett: I note the objection. We would have had the same objection about the Israeli discussion of the 1917 map. [PVR 11] Returning to this map, Mr. President, you will see that on the coast, down towards the south the features marked include a navigation beacon. Then as you go up the coast, you will see that there is a road marked, and then just off the coast, about half way up, you see that there are "white navigation stones" -- two. And then continue up and you will see that on the island of Faraoun there is marked a "large white cairn" A large white cairn on Faroun Island. Further up there is marked the "end of motorable track" and further up still there is a note saying -- "track passable to War Department" -- or some department -- "vehicles only". And then of course when you come into the mouth of Wadi Taba you get Bir Taba marked, the Customs House, the Rest House, and so on.

On the face of it, it's difficult to believe that all that evidence about navigation beacons, about white navigation stones, about a large white cairn on Faraoun Island is not the result of survey. The evidence suggests that there was a survey and only by reason of such a survey on the ground, on foot, was this evidence introduced into the map. You don't get evidence of that kind from a high-level aerial photograph as Israel has suggested. Now, of course, if that is so, Mr. President, then the question arises, if these surveyors could identify these small white cairns or stones, if Parker was still there why couldn't they see Parker? Why isn't Parker identified on the map? It must have been at least as big as some of these other navigation beacons or white cairns which are identified, so the non-existence of Parker on that map suggests very strongly that the Parker Pillar did not then exist.

Now, in fact, with this new appreciation of the meaning of the map evidence, I believe we can say that all thè maps do fit with Egypt's case. I think this is equally true of the two very recent maps. That is to say the 1979 Peace Treaty map and also the 1986

Compromis map. The 1979 Peace Treaty map was prepared by the U.S. and that shows a boundary line in black, fully consistent with Egypt's position. Now of course it is true that on the Peace Treaty maps the line depicted [PVR 12] is only an indicative line. The main purpose of that map was not so much to depict the boundary but rather to mark the two lines east and west behind which the Israeli and the Egyptian forces were to withdraw. But the map nevertheless does locate Ras Taba correctly and it makes no mention of Ras-el-Masri. To turn to the other map -- the Compromis Map -- that also is a United States map on a scale 1:100,000. It is actually a 1959 map. The Egyptian pillar locations shown on that map are all exactly on the boundary line and BP 91(E) on that map is marked as Boundary Pillar. The promontory beyond the Granite Knob is marked as Ras-el-Masri. It is not marked as Ras Taba.

Now, Mr. President, I ought to say a word or two about these two new maps which Israel has produced yesterday. These are the 1917 map and what I may call the 1933 geological map. These are the two new maps. The 1917 map is the one with squares on. This, of course, uses a square grid rather than coordinates. I suspect its use was primarily designed for artillery. In the area which interests us, it identifies a Boundary Pillar at 298 feet. If you look at the bottom of the map near the number 21 there you will see "298 BP" and the words "Boundary Pillar" appear with an arrow pointing up to the monument -- to the triangle. No other Boundary Pillar is shown, so on that point this map conforms exactly to the 1915 map. The other interesting feature about this map is that it was published by the Survey of Egypt. It was not published in London like the 1915 map. It was published by the Survey of Egypt so that fact suggests that we now have here an independent corroboration of the British 1915 map published in a different place by a different authority. The other interesting feature is that, as you see in the legend, in small print at the bottom, it was based upon a survey in 1917. It says expressly: "from triangulation and plane table survey 1917", and there are no two arrows on that map. So we now have the map, relying on a different survey, not the Newcombe survey, this [PVR 13] is now a different survey some years later in 1917: no two arrows, no two pillars. Now we frankly find it unlikely that the two surveys, the one in 1912-13 and a separate survey in 1917 could make the same error, the same mistake, over two arrows and confuse a Boundary Pillar with a trig point. That's in our view what appears from the 1917 map.

Mr. President, may I now turn to the other new map -- the 1933 geological map. This is the rather rougher map, headed geological map on the front. A geological map is not prima facie concerned with frontiers or

boundaries unless of course the limit of the exploration permit is itself defined in terms of the international frontier. Nevertheless, it is interesting to see where on this map the frontier line, and it is labelled "frontier", is shown. The line labelled frontier runs along the top of the hills-- exactly consistent with Egypt's line -- that is to say well to the east of Wadi Taba. It overlooks Wadi Taba. It shows, as you will see, a BP 90 which in our view would correspond exactly to the location of BP 91(E). The elevation given for BP 90 is not very clear. I think you may need your magnifying glasses. It looks to me like 89 metres. Now if that is right, that is a mistake. The elevation of BP 91(E) is not 89 metres. It is 91 metres. So that is the first mistake in this map. Then it shows the boundary line swinging rather sharply towards the southwest. Now there are a number of comments about that change in direction, that swing towards the southwest. The first is that the bend in the line, that sudden swing towards the end, is not shown on any of the official survey maps published either by the Palestine authorities or by the Egyptian authorities during this period. The second point I would make is that if you look at where the line appears to end, it appears to end at a spot which is marked as an elevation of 19 metres. Well it is very small, Mr. President, I understand your difficulty, but it is right at the end of the line. My best guess is that [PVR 14] is 19. Against that point there is a hieroglyphic which we at first thought read "APX". It may be "AP 91". I feel sure that Israel will tell you that it is actually "BP 91". They will be able to read it as BP 91. But assuming that it is, then that is the second error in this map, because the elevation of the Parker Pillar is not 19 metres. In the Counter-Memorial of Israel, the correct elevation given for the Parker Pillar is, as I recall, 27 metres. So there is an error of eight metres made in the elevation of that feature, whatever it may be.

But the real question, Mr. President, is does this map -- the geological map -- really constitute any evidence that the Parker Pillar was still there in 1933? I have already told you of the difficulties of actually reading what is there and certainly the elevation does not conform to Parker. But there are other questions to be raised. Who published this map? They told us it was attached to a report by Mitchell. Who is Mitchell? What government does Mitchell represent? Second question, was there a survey on which this map was based? A survey accurate enough to detect whether Parker really was there in 1933? [Tape No. 188] If there was a survey it really wasn't a very good one because they have got two elevations wrong. And would a surveyor, even if he was there, concerned with constructing a geological map, really concern himself with the precise location of boundary pillars?

I suggest not, but, Mr. President, we really do not know. Now you understand that I am in some difficulty in dealing with this map before we have heard what Israel has to say, but since this is the last opportunity that I will have to talk about these maps I thought I had better speak now. [PVR 15]

Now, so much for the two new maps. We are still left with Israel's post-1982 maps. And I think the Tribunal ought to note rather carefully the Israeli position on Israel's post-1982 maps. That position was given to you by Mr. Sabel on 22 March, in the morning, at page 24 of the Record. His suggestion was that, as I understood him, that there is nothing extraordinary in these post-1982 maps. Indeed, nothing could be more natural than for Israel to reflect its new claim in its own new maps. Well that I understand, but, Mr. President, that really misses the point. The point is, how does Israel explain its pre-1982 maps, which do <u>not</u> reflect its claim? That is the real question. Now, the change in Israel's position, which is reflected in those maps, the change which occurred in 1982, cannot be explained by Israel's new theory of an error in the British 1915 map. Why? Well because this error, this new theory, was revealed to Israel by Mr. Rushworth only a few months ago in late 1987. They couldn't possibly have known about that in 1982. So that explanation can't be given. Nor can the change in position be explained by the discovery of the Parker Pillar, because Israel tells us that it knew of the existence of the Parker Pillar way back in 1949-1951. It had the photographs of the Parker Pillar, it had the 1917 map which they say shows the Parker Pillar. So that can't explain the change of position in 1982. So how do we explain this change from the pre-1982 to the post-1982 maps? That is the question which Mr. Sabel does not answer at all.

In our view, Mr. President, it's clear that the alteration in the Israeli maps had no basis other than the desire to support a claim for which in 1982 they had not, at that time, even a plausible excuse. It was an artificial, manufactured claim, and in our view it is a claim which Israel no longer seriously advances in this arbitration.

I think, Mr. President, we are now in a position to clarify the history of these two pillars, Parker and 91(E). [PVR 16] Let me deal first of all with Parker. Looking at all the evidence, we say that Parker was the first original pillar built in 1906. It was built in the presence of the same Turkish Commissioners who were members of the Demarcation Commission. It was a Boundary Pillar, it was never a trig point, and it is inconceivable that the Parker Pillar was wrongly located. The telegraph poles must still have been there. The building of the masonry pillar was two and

a half months after the placing of the telegraph poles, and Mr. Rushworth admitted that he could see no possible explanation for any such error being made in wrongly locating the Parker Pillar. Indeed, it is quite clear that Israel has not proved, or even attempted to prove, that there was an error in the location of the Parker Pillar.

Egypt cannot rule out the possibility that the Parker Pillar numbered 91 may have remained there during the Newcombe Survey between 1912-13. We accept that there is a possibility that we may be mistaken in assuming that the Parker Pillar had disappeared by the year 1912. Certainly, we would admit that we did not detect or appreciate the significance of that small second arrow, if it be an arrow, on the field plot X.1. So, Egypt cannot be sure whether Parker was still there through the years 1915 up to 1922. Beadnell, of course, refers to a penultimate pillar without saying expressly whether the ultimate or final pillar was still there. So Beadnell's evidence is inconclusive. What we can be sure of is that quite certainly at some point in time the original Parker Pillar disappeared. And the fact is that we have no actual proof, no real proof, that the Parker Pillar was in existence at any time during the mandate period between the years 1922 through to 1948.

Of course we have Israel's photographic evidence, which suggests that a new Boundary Pillar, not the original Parker, a new Boundary Pillar, was erected, or was in place on the same site in the years 1949 to 1951. This evidence does not [PVR 17] accord with the evidence of General Hamdy, or the evidence of General Mohsen, both of whom gave oral testimony before this Tribunal. Equally, the evidence of this new pillar on that site, on the Parker site, in the years 1949 to [1951] is not consistent with Israel's own maps, and I would ask you once again to take up the Egyptian Map Atlas and to look at Map No. 15, which is the Survey of Israel for 1950, that is Map No. 15 in the Map Atlas. This is the 1950 Survey of Israel map. The point is there is no bend in the boundary, there is nothing to indicate a bend in the final part of the boundary, so as to suggest a deviation over towards Parker. The same is true of the survey for the following year, if you look at map No. 17-2, and that is the best one, 17-2, again you'll see the same feature, the boundary line runs straight; there is no discernable bend over the last section.

And so, Mr. President, Israel's own survey maps in the years 1950-1951 do not show the existence of the Parker Pillar in the years 1949-1951 which the Israeli photographic evidence suggests was actually there on the site. That is a discrepancy for which we have as yet had no explanations.

In any event, Mr. President, what is quite clear, and beyond any question, is that whatever was there, if it was there, was not the same pillar, it was not the original Parker Pillar. It was a replacement pillar, smaller than the original pillar, quite perceptibly smaller in height, and this replacement pillar we know had itself disappeared (so this is the second disappearing act); that the replacement pillar had itself disappeared by February 1967. Why do we know that? Well, because Mr. Yigal Simon told us so. You remember Mr. Simon's evidence. He said he was there at that time, in February 1967, and he said that they knew of the site of the Parker Pillar, but no pillar was there in February 1967. Now, Egypt simply does not know when or how this replacement pillar disappeared. And we need only recall that from 1957 onwards, once UNEF was in position, the Egyptian forces were 5 kilometres back [PVR 18] from the frontier and the matter is simply not within our knowledge. The one thing that is certain, beyond any shadow of doubt is that Israel destroyed the site, the cliff on which the Parker Pillar originally stood, so as to construct the new coast road. That Israel concedes and explains in her Counter-Memorial.

Well, so much, Mr. President, for the history, such as we know it, of the Parker Pillar. I want to turn now to BP 91(E). Now BP 91(E), in our submission, was built in 1906 as the penultimate pillar numbered 90. It was always a Boundary Pillar, it was built like a Boundary Pillar; it was later adopted also as a survey point, as a trig point, and coordinated, either in the 1911 survey or certainly in the Newcombe survey during the years 1912-13. Hence, it is used on all the post-1915 maps. But of course its identification as a trig point does not mean that it was therefore not a Boundary Pillar. It was both. Beadnell, in 1922, identified this pillar as the penultimate pillar and beyond question Beadnell identified it as a true Boundary Pillar; the location, the height, are really beyond dispute. They all coincide exactly with BP 91(E).

We get further identification on the same monument, as a Boundary Pillar, throughout the whole period. 1931: survey letter, 1940: Dr. Ball's survey card, 1941-1945: Trig List 144, 1960: General Hilmy's letter and, Mr. President, on virtually all the maps during this whole period, there is a Boundary Pillar on that location BP 91(E).

Israel's own photographs taken in the years 1949-51 also confirm the existence of this Boundary Pillar. We have, in addition, the evidence from our own witnesses, General Hamdy, for example, confirming that in 1949 he saw a Boundary Pillar at BP 91(E). And by 1967, we know that BP 91(E) was still there because

that has been confirmed to us by Mr. Yigal Simon, the Israeli witness, who you remember said, [PVR 19] in all frankness, that in 1967, when he was there, he saw a Boundary Pillar at 91(E).

Now, after June 1967, Israel was in occupation of the site continously thereafter. It therefore follows, Mr. President, that since the Boundary Pillar is no longer there, the destruction of that pillar must have been a destruction by Israel, or with the knowledge of Israel. In short, the evidence of Mr. Yigal Simon confirms directly the report contained in Monitin, in this Israeli periodical about the plan by the Israeli Government, [decided] at a high level, to destroy that Boundary Pillar. And we have no evidence before us, no denial by Israel, of that Monitin Report.

We also have evidence that there were remnants of the pillar, located on that site, in December 1981 and January of 1982. Those are the remnants which had disappeared by 1988 with the sole exception of the iron flange. That evidence is of course the evidence of H.E. Kamal Hassan Ali, Admiral Hamdy, and General Mohsen. So even the remnants of the pillar, they too disappeared when Israel was in exclusive control of the site. So much then for the history of these two Boundary Pillars, such as we can deduce from the evidence.

I want now, Mr. President, to turn to the question of what knowledge the two Parties, Israel and Egypt, actually had about the existence of these two features. At three different stages: first of all, at the stage in 1981-82 when their representatives met on the Joint Boundary Commission; then I want to turn to the state of their knowledge when they signed the Compromis in 1986, and then I want to turn to the state of their knowledge during the written pleadings. Now, the reason I do this, Mr. President, is that the state of mind of the Parties, what they actually knew, is important in correctly interpreting the Compromis, because what they knew, the state of their knowledge, is relevant to the correct interpretation of what they agreed to [PVR 20] in the Compromis; it is therefore crucial to the task of this Tribunal.

Let's take the first stage. This is the period December 1981-January 1982 when the Joint Boundary Commission was actually in Wadi Taba. The Tribunal will recall what actually happened: you remember that the Commission was looking for pillar remnants; they'd agreed what is now Boundary Pillar 90 and so they were agreed that they were now looking for the remnants of the final pillar. They also agreed that what they were looking for they would term Boundary Pillar 91. Remember the evidence of Admiral Hamdy and also

H.E. Kamal Hassan Ali, that the Israeli representatives took them to the Dom palms where they found nothing, at least no pillar remnants. The Egyptian representatives insisted upon going up to the top of the ridge, basing themselves on their maps, to look for a pillar remnant at the site of what is now BP 91(E) and they found remnants. Now, that is the story of what happened from Egyptian witnesses, I am sorry to say we were not given any testimony by witnesses on behalf of Israel, even though General Sion himself was here during the first stage of these hearings. So that is what happened.

Now let's see what the two Parties knew. Egypt's knowledge, having been out of the area for many years, was based primarily on the maps. The Egyptian representatives knew of the 1915 map, they knew that it showed one Boundary Pillar at 91 metres on a high cliff overlooking the Wadi. The map they were actually using was at a much larger scale, it was the 1935-1938 Survey of Egypt, the section dealing with the northern Sinai, which in the Map Atlas is No. 6. Now, that map, the map used by the Egyptians, showed Pillar 91 well to the east of Taba, well to the east both of the Frontier Administration Post and the Rest House. They also had the Wade and Owen Reports and they believed, on the basis of those Reports, though there was some confusion about the numbering, that they were looking for one [PVR 21] pillar at 91 metres on the line of cliffs overlooking Wadi Taba. And of course the remnants they found tied in with that. Now, what they did <u>not</u> know is perhaps equally important. They did not know in 1981-82 of the destruction of the Parker site. They knew nothing of the extent to which Israel had removed the cliffs on which Parker had originally stood. And of course they had no reason to believe that the maps they were using were wrong.

Now, let's see what Israel knew. We don't quite know what materials their representatives were using because we haven't heard any evidence, no witnesses on their side. But Mr. Rushworth testified that he saw in Jerusalem a 1917 map in the archives in Jerusalem, showing that there were two pillars, one labelled BP 90 at 298 feet, and then another pillar, a second pillar, 200 metres nearer to the coast, also marked as a Boundary Pillar. And he confirmed that, in his view, looking at this map, these were the locations of BP 91(E) and the Parker Pillar. That's Mr. Rushworth's evidence,
24 March in the afternoon, pages 20-25. So Israel knew that there were two pillars. Secondly, Israel knew of the removal of the cliffs and the removal of the site on which there had been the site of a pillar. Mr. Simon's evidence, Yigal Simon's evidence says that he knew that on that cliff, in 1967, there had been a pillar site. The pillar was no longer there but he knew there was a pillar site there. So that they knew.

[Tape No. 189] They also without question knew of the destruction of BP 91(E). They must have known the pillar was intact when they occupied the site in 1967. And yet what did Israel say in the course of these negotiations with the Egyptian representatives? Well, they said nothing about two [PVR 22] pillars, they said nothing about the destruction of the Parker site, and they said nothing about the destruction of Boundary Pillar 91(E). Mr. President, that does not to me look like a frank genuine collaboration in good faith with the Egyptian representatives to locate this pillar.

Now, let's switch the time scale. Let's now turn to the time of the conclusion of the Compromis on 11 September 1986. I think it is useful, before looking at what the Parties knew, to just review what they were agreeing to in this Compromis. You will recall that the Parties had already agreed on an initial procedure for resolving boundary questions. That was agreed on 25 April 1982. They were therefore pledged by this Agreement of April 1982 to: "an agreed procedure which will achieve a final and complete resolution". I add, in parenthesis, that there is no suggestion there whatever that they had in contemplation a non liquet. After that they agreed the Compromis. If you look at the Compromis, you will see that in the Preamble the Parties reaffirm their commitment to act in good faith, they confirm their commitment to this Agreement of 25 April 1982, and they reaffirm their desire that the dispute be resolved fully and finally. And then, in Article II, they entrust the Tribunal with the power to decide on the location of the Boundary Pillars in accordance with the Peace Treaty and the '82 Agreement -- that is to say -- to achieve a final and complete resolution of the dispute and, of course, in accordance with the Annex.

Now the Annex is interesting. If you look at the Annex -- the Annex identifies one pillar at Taba, not two, one pillar. If you read paragraph 2 of the Annex there is no other possible interpretation of that paragraph: "Each party has indicated on the ground its position concerning the location of each boundary pillar listed above." "For the final [PVR 23] boundary pillar No. 91" -- the final Boundary Pillar No. 91-- "which is at the point of Ras Taba [on the western side of the Gulf], Israel has indicated two ... locations, ... Egypt has indicated its location" -- so both Parties are agreed that they are looking for Boundary Pillar 91, one pillar. They are agreed that that pillar will be called, identified, as Boundary Pillar 91. And 91 had to be, had to be, either one of the two Israeli locations or the Egyptian location 91(E).

Let me cite to you paragraph 5 of the Annex. "The Tribunal is not authorized to establish a location of a Boundary Pillar other than a location advanced by

Egypt or by Israel and recorded in Appendix A." So paragraph 5 excluded the choice of any other pillar. So that is the background, the treaty background, against which I think we might now usefully look at the knowledge of the two Parties.

Let's look at Egypt. Egypt's knowledge was basically the same as before, i.e., a state of comparative ignorance. They still believed there was only one pillar and had only been one pillar for many many years. Of course they did have one additional piece of information. In June of 1985, the U.K. Government, the United Kingdom Government, had transmitted to both Parties a number of documents designed to assist with the case and what they transmitted included a small reproduction of what we call the Parker photograph, that is to say the photograph to be found at pages 96 to 97 of the book entitled The Diaries of Parker Pasha. That is found at the Israeli Counter-Memorial Annex 93. Now, that photograph -- rather a small reproduction -- showed a pillar on the ridge. The Egyptian authorities in Cairo assumed that that pillar shown in that photograph was 91(E). This confirmed them completely in their view that the Israeli locations down in the Wadi had no basis whatsoever. The Egyptian authorities assumed that what was shown was 91(E). Now that is what Egypt knew. Let us see now what Israel knew. [PVR 24]

Israel's knowledge was the same as before. Of course they now, too, had the Parker photograph, but of course they already had other photographs showing Parker. Moreover, their photographs showed that there were two pillars there, so they knew that this could not be the same pillar. And by reason of these quite separate photographs, these were the photographs found in the files of the Government Press Office, the photographs taken in the years 1949-51 and produced by Israel with the letter of 9 March, by reason of having these photographs in its possession, Israel knew a number of things. Israel knew that Parker was a different pillar; Israel knew that they had destroyed the cliffs on which Parker had been located; Israel knew they had destroyed Boundary Pillar 91(E), and Israel had photographic evidence to prove all of these things. What did Israel say to the other Party with which it was negotiating in good faith? Nothing, Mr. President, absolutely nothing. Despite all these references to acting in good faith, establishing of procedures for a final and complete resolution, Israel said nothing.

Now, I think the conclusion must be, Mr. President, that at this stage Israel had already begun to formulate a possible future legal argument. I would speculate that that legal argument, now forming in the contemplation of Israel's advisors, was first of

all based upon initially concealing the existence of Parker as a second pillar and also initially concealing the extent of the alteration of the Parker site.

Secondly, it depended upon continuing to deny the existence of a pillar of any kind at the location of BP 91(E), despite the photographic evidence they had-- they would deny its existence completely. And remember, that of course at that stage there was no suggestion whatever that this pillar, which they knew of, was merely a trig point, that was not in contemplation. [PVR 25]

They would rely, thirdly, on the intervisibility argument to justify their own locations down in the wadi. And then, I suspect they developed a reserve plan -- a plan which could be brought into existence if Egypt looked like proving on the basis of the map evidence, that there was a pillar up on the ridge overlooking the wadi and it was not intervisible, nor was it required to be intervisible, under the 1906 Agreement. Now if Egypt got that far, or looked like proving those propositions, then the reserve plan developed by Israel was to spring a surprise. At a very late stage in the arbitration to spring a surprise and to show Parker, to explain that Parker was a different pillar from 91(E). Could be proved to be different by the photographs they had in their possession and indeed, because, clearly, Israel had destroyed the Parker site, so it must be different from 91(E). And thus this would enable Israel to argue that BP 91(E), even if it was a genuine pillar, could not be the final pillar.

And so if the Tribunal was not going to find for the Israeli locations, the Tribunal would then be tempted into returning a <u>non liquet</u>. That plan may well have been formulated at a very early stage. It would of course mean the frustration of the arbitration and of course it would also mean that since Israel was in possession of the site, of the site of the Sonesta Hotel, Israel would stay in possession after the arbitration had been frustrated.

Now, this I think was the position at the time of the Compromis. We then come to the knowledge of the Parties at the time of the pleadings. Mr. President, you would like tea -- I thought you might -- I can stop at this stage.

<u>The President</u>: Yes, I think we will take our tea now, but I would like to remind you of a small point here. We asked for comments upon this map which is called Annex 115B in the Israel Rejoinder, and which you all have produced, I believe, just before these hearings. [PVR 26]

Prof. Bowett: Yes, Sir. There are one or two of your questions which we are proposing to answer in writing by the end of the week.

The President: You can't comment upon this before? Because if you do it in writing then there must be a post-hearing memorial.

Prof. Bowett: There is nothing very unusual about that in answer to questions posed by the Tribunal.

The President: No. It is a possibility if you have need for it, unless you can't comment upon it orally now -- it would be of course preferable, but you tell us of your position after the tea.

(tea break)

The President: The Hearing is resumed. Professor Bowett will continue.

Prof. Bowett: Mr. President, just before the break you pressed Egypt to say something about the map 114B. You will recall that General Mohsen gave testimony about this map during the first phase of the proceedings, and we would simply confirm what he said in his testimony, that is that in our view this is an Israeli map. The source of the map is an Israeli map. There may be previous editions of this map, but it is an Israeli map and that can be seen because the names which are written on the map, although they are written in Arabic, are in fact Hebrew names -- names such as Wadi Shlomo. That is not an Arabic name, that is a Hebrew name. The second thing we would say is that the map was not published in Cairo, and indeed this is confirmed by the fact that such Arabic words as are used on the map (in the legends to the map) are not Egyptian Arabic. Our impression is that this is a map which may have been published either by Syria or by Jordan, or possibly by Iraq, but it is a map based upon an original Israeli map. And I think really for that reason it's better that our friends on the other side, since it is an Israeli map, should explain it rather than we should. [PVR 27]

Now, Mr. President, if I can return to where I left off. I have examined the state of minds of the two Parties, both at the time the Joint Demarcation Commission was operating in 1981-82, and at the time, the crucial time, when they concluded the compromis d'arbitrage.

I want now to look at how their respective knowledge of the facts developed during the pleadings. Egypt filed its Memorial. Now by the time that Egypt had filed its Memorial, Counsel for Egypt, in England, had discovered the Parker photograph quite

independently. So we had this photograph. And Egypt's advisors, including their Counsel, were puzzled by this photograph. Of course the photograph obtained in England clearly demonstrated that the Israeli locations for the final Boundary Pillar were wrong, that much was clear. But the reason for our puzzlement was that the terrain didn't quite fit. We couldn't actually fit what we could see on the photograph exactly with what was actually on the ground -- with the actual terrain. Now of course, that is why we used somewhat guarded language in the Memorial and referred to the pillar as being either BP 91(E) or in its vicinity. We used that phrase because we were really rather puzzled. Of course the reason why we were puzzled was that we did not know that Israel had so altered the terrain and had cut away the cliffs. That's why we couldn't match the photograph with the actual terrain.

Now Israel, of course, filed its Memorial simultaneously. Israel said nothing about Parker, nothing about a second pillar, nothing about the destruction of the Parker site, and nothing about the destruction of BP 91(E). At that stage we do not even hear of this thesis, not only that there were two pillars, but that 91(E) was really a trig point. And that is all we know in the Memorials.

Then come the Counter-Memorials. Egypt's position doesn't change. Egypt reacts to these rather vague [PVR 28] allegations by Israel about the wrongful location of pillars by saying, in a sense, "What pillars do you say were wrongly located"? "Where is the evidence for this"? Israel in its Counter-Memorial, for the first time, discloses the destruction of the Parker site. So it has taken six years for Israel to tell the Egyptians that the Parker site has been destroyed. And we now get the Israeli attack on the British 1915 map on the basis that there has been no prior survey. But still, even at this stage, the stage of the Counter-Memorials, no admission that there was anything at all by way of a pillar at 91(E), and certainly nothing of this "final pillar" argument.

Then comes the Rejoinder, by this time Egypt recognizes that Parker could not be BP 91(E). But of course Egypt has the 1915 map to show that there was a pillar at 91(E) and can also prove that there was a thorough survey in 1912-13. Now, Egypt's examination of the basis of the survey -- of the field plots-- simply did not detect in the British Library in London, this so-called second arrow and therefore, Egypt had no reason for doubting the accuracy of the 1915 map in identifying 91(E) not only as a true Boundary Pillar, but also as the only Boundary Pillar in that locality.

Now, Israel, by this time, has begun to use Mr. Rushworth. Mr. Rushworth agrees with Egypt, that

there was a survey prior to the 1915 map so that doesn't help Israel. Mr. Rushworth is thorough and he detects what he regards as two arrows and, on the basis of this, Israel is able to develop a somewhat new theory. This theory would involve admitting that there were two pillars, one at Parker, one at 91(E) and then developing a new argument. Now that is the final pillar argument, to strengthen this non liquet argument which has already been hinted at rather vaguely in Israel's Memorial. [PVR 29]

Now the difference between the original reserve plan which I believe Israel had -- this legal argument to be used -- and the new argument which has now become possible with Mr. Rushworth's help, is of course now there is no need for Israel to worry about explaining away the remnants which were undoubtedly on the ground at 91(E). In fact now Israel could even afford to admit that there had been a pillar, they could even afford to admit that they had destroyed that pillar, but of course Israel is now able to say "but it doesn't matter, because it wasn't a true Boundary Pillar, we didn't destroy a Boundary Pillar, it was only a trig point". But this argument is not used in the Rejoinder, nothing of this argument is contained in the Rejoinder. All that Israel presents in the Rejoinder are two red herrings. One is this Turkish gun in the wadi in 1913, and the other complete red herring is this photograph of the so-called frontier cairn on the beach taken in 1936. [Tape No. 190]

But the real argument which Israel has -- the "bombshell" based on the new evidence, the new argument -- that is not given in the Rejoinder. That is to be kept back. And you may remember it was produced for the first time only when, on 9 March, Israel filed before the Tribunal the photographs of the two pillars, the field plots, X.1 and X.2, and of course produced Mr. Rushworth himself. Now the expectation clearly was that Egypt would be thrown into disarray, the final pillar argument would succeed, and the Tribunal would be forced to return a non liquet.

Well, Mr. President, I don't believe things have turned out quite in that way. The final pillar argument cannot succeed, whatever the evidence, because both Parties have agreed in a formally binding instrument to locate BP 91 as [PVR 30] the final pillar as it existed in 1986, the date of the Compromis. The Tribunal simply cannot accept the interpretation of the Compromis which says, first of all, "locate Boundary Pillar 91"; secondly, "but this is impossible, because we, one Party, Israel, have destroyed the site of that pillar way back in 1970". Therefore, q.e.d. the Tribunal must return a non liquet. That interpretation is impossible for any respectable Tribunal to accept, and unfortunately the facts don't support Israel

either, because although Mr. Rushworth may have been right on certain things, in our submission he was absolutely wrong in his inference that the pillar at 91(E) was simply a trig point and not a true Boundary Pillar; the pillar that Israel destroyed was a true Boundary Pillar.

So, Mr. President, the Tribunal, I think, must reject Israel's argument, both as to the facts, that is to say a Boundary Pillar did exist at 91(E) and also, I would suggest, as to the law. I say that for the reason that this Boundary Pillar -- 91(E) -- was located on the recognized international boundary -- a boundary so recognized by Egypt, by Turkey, by Great Britain, by the United Nations, and, indeed, by Israel herself until 1982.

I find it difficult to resist expressing an opinion about Israel's conduct over these pillars, or even about the manner of pleading in this case, but perhaps I ought not to do that because I am sure, Mr. President, my opinion would cause resentment on the other side. So I'll leave the Tribunal to form its own impressions of the Israeli conduct and the Israeli pleadings.

Now, Mr. President, if I may now leave Boundary Pillar 91 and undertake the task assigned to me which is to offer you now a summary of the evidence and the argument of the two Parties in general over the case as a whole. As I have indicated to you, Israel's case, or claim, is not in our submission a very serious claim. As to the Israeli case on [PVR 31] the Boundary Pillars in the northern sector -- I mean by that all the disputed pillars to the north of BP 91 -- I will compare that case with that of Egypt so that the comparison should be absolutely clear.

The essence of the case as to the northern pillars is that Israel has no genuine pillar remnants to offer in evidence for any of its locations. Despite the agreement in the Joint Commission that pillar remnants were to be regarded as the best evidence, Israel can find no such remnants. Israel relies on markers used by UNEF, or else upon the secondary evidence -- the interpretation of the 1906 Agreement. And even on that Agreement, Israel's interpretation is simply wrong.

In contrast, Egypt has either complete pillars or genuine pillar remnants, and that is true of 91(E), that is true of all the other pillars. And all of them lie at locations conforming to the 1906 Agreement.

Israel's allegation that these pillars were wrongly located is simply wrong. These are in most cases original pillars and there is no evidence

whatever to support the allegation that they were wrongly located.

The Israeli thesis of error is sheer fantasy. We have no serious proof of any such error and indeed we find it impossible to believe that such an error could have occurred virtually by the same demarcation body that two and a half months earlier had placed the telegraph poles in position.

The Israeli thesis of error is also contradicted by the map evidence. It is simply inconsistent with the original, authentic Turkish map, which was attached to the 1906 Agreement and on which the Turkish Commissioners would most certainly have relied. The Turkish map of course preceded the demarcation but the map supports the Egyptian locations and not those of Israel. Not only at Taba, but in particular in the Ras el Naqb area. [PVR 32]

How then can it be argued that Egypt's positions for the pillars are based on errors in the demarcation when the Egyptian locations conform exactly to the authentic map drawn before demarcation? The argument simply doesn't hold. Of course, one can understand why Israel is unenthusiastic about the authentic Turkish map. It is directly contrary to Israel's case. But this map has a special status and there can be no suggestion that this map too contained errors. Moreover, it is confirmed by other contemporary maps, such as Wade's 1906 sketch map and also by the Rushdi map.

Now, Mr. President, I believe the Tribunal need not spend too much time on these rather curious geographical arguments which Israel uses to give some semblance of reality to its thesis of error. In 1906, in this rather barren part of Sinai, geographical names were attached to features without any great precision. What mattered was what the Parties intended to refer to. And so, in my submission, there is no basis for Israel's argument that the eastern ridge runs all the way up to Gebel Fort. There is no basis for the argument that Wadi Taba is the unnamed middle Wadi and cannot be in continuation of what we now call Wadi Gasairiya. But both those arguments are spurious and of course they are designed for the sole purpose of justifying placing the boundary further to the west. The same is true of the mislocation of both Gebel Fathi Pasha and Gebel Fort. The arguments are demonstrably wrong and they are inconsistent with all the contemporary maps: Owen, Wade, Rushdi, and the authentic Turkish map. Moreover, they ignore the actual text of Article 1 of the 1906 Agreement. This is nowhere better illustrated than in the Ras el Naqb area. Here Israel's argument ignores the express terms of Article 1 of the Agreement. In fact, it requires an

additional pillar -- the new Boundary Pillar 87(I)-- to move the line over to the west. And then, of course, as a consequence, Israel is forced to number Gebel Fort as BP 86(I), when it clearly should be [PVR 33] BP 87, and it requires placing a Boundary Pillar on Gebel Fathi Pasha -- that is BP 85(I)-- simply ignoring both the terms of Article 1 and Wade's technical account of the location of these pillars. It also requires the allocation of the name Wadi Taba to the small middle Wadi, when it is certain that this is not what was regarded as Wadi Taba in 1906.

Now I would emphasize, Mr. President, that Egypt's locations for the Boundary Pillars in this area require none of these contortions. Egypt's locations conform not only to existing pillars, but to all the other evidence -- the treaty texts, the Wade and Owen Reports, and the maps. Israel's treatment of its own inconsistent conduct is little short of remarkable. The clear contradiction between its claim -- its present claim in the Ras el Naqb area -- and its own pre-1982 maps is simply ignored. The equally clear contradiction between Israel's acceptance of the Yugoslav units of UNEF operating on Egyptian territory exclusively and Israel's new claim that this very same area is Israeli territory is simply brushed aside. We are simply told that UNEF's operational limits were simply armistice demarcation lines.

Now, Mr. President, in this part of Sinai that is simply not true. The recognized line was the international frontier. I urge you to consider carefully the implications of the evidence offered by the Yugoslav officers. Now, first, UNEF was never, never allowed to operate on Israeli-held territory. Second, the evidence of the Yugoslav officers -- which was unchallenged -- showed that they did operate in this area of the Ras el Naqb which is now claimed by Israel. Now, what conclusion can be drawn from those two propositions? Mr. President, I suggest that the conclusion is absolutely clear. The conclusion is that at no time between 1957 and 1967 did Israel ever consider that it had any right or claim to this part of the Ras el Naqb. It recognized that this territory belonged to Egypt and that is [PVR 34] why UNEF was allowed to operate on that part of the territory.

I turn now to Boundary Pillar 91 -- a pillar for which, in our view, Israel has never seriously believed in its claim for either of the two locations, 91(I) (west or east). And as I have suggested to you during the course of these proceedings, I think what we have seen is virtually an abandonment of Israel's positive case for either of these two pillars and a shifting of the case in order to attack Egypt's BP 91(E) and then to move over to a proposal that this Tribunal should return a <u>non liquet</u>.

Now, Mr. President, Egypt's case for BP 91(E) is really a very compelling one. There clearly was a pillar there, although at one time Israel has destroyed this pillar and has attempted to remove the remnants. But even Israel now admits there was a pillar on this location. So what exactly is Israel left with?

In effect, Mr. President, Israel is left with only two arguments. The first is to say that the monument-- the marker -- on this location was really a trig point and was marked as a pillar by error in the 1915 map: an error not detected and therefore perpetuated, repeated in all the subsequent maps.

Now that argument can't succeed, Mr. President, and it fails really at two quite different levels. The first level is one of proof or of evidence, because in essence all Israel has produced is not evidence, it is speculation by its witness, Mr. Rushworth, about how or why this mysterious second arrow on the field plot X.1 failed to be reproduced either on X.2 or indeed on the eventual printed 1915 map. The theory must be wrong. As I have explained, it is just as likely, if not more so, that the map constructor made no error at all. Mr. Rushworth could offer no explanation of why this marker had been constructed like a Boundary Pillar, not like a trig point. Nor could he explain how Beadnell, a [PVR 35] competent surveyor, could identify it as a Boundary Pillar only seven years later in 1922. Nor could he explain -- indeed he did not even consider-- how the numbering of the pillars in 1906 could not be reconciled with his theory. In short, BP 91(E) numbered 90 in 1906, had to be a true Boundary Pillar, otherwise you have the gap which I have just shown you on the illustration between 89 and then the final pillar -- Parker -- then 91 in 1906.

So as a matter of evidence, the Israeli argument in my view simply fails. But in any event, Mr. President, there is a question of law here -- not simply of evidence, there is a question of law. And the Israeli argument would fail as a matter of law whatever the evidence. Even if there had been an error -- even if Mr. Rushworth was absolutely right -- if there was an error in the making of this map in 1915, the fact is that it is a matter of law that where the States concerned in this boundary have for a period of seventy years acted on the basis that the monument, the marker at the location of BP 91(E), was a boundary pillar and have so marked on their maps, then that becomes the incontrovertible position. The error simply no longer matters. This is really what the principle of the stability of boundaries is all about. It relies upon the acquiescence of the Parties to cure any such error and to deny the right of any State to invoke such an error after so many years. And the inescapable fact is that not only Great Britain as

mandatory, but also Israel herself has accepted BP 91(E) as a Boundary Pillar right up to the year 1980.

Ask yourself this question, Mr. President. Why else would Israel destroy BP 91(E) if it were not a true Boundary Pillar? I mean, if Israel genuinely believed that BP 91(E) was in fact a trig point wrongly identified as a Boundary Pillar, why destroy it? Surely if Israel had been acting in good faith when the mixed Boundary Commission had its meetings in Taba in 1981-82, Israel would have shown the Egyptian members this monument and then shown them all the [PVR 36] evidence to prove that this really was a trig point wrongly identified as a Boundary Pillar. But we know that Israel did nothing of the sort. Israel destroyed the pillar and Israel cannot deny, in the light of Mr. Yigal Simon's evidence, that it did so destroy that pillar. So both as a matter of evidence and as a matter of law, the first Israeli argument is simply insupportable.

I turn now to the second Israeli argument based upon the Parker Pillar. Now in our submission, in the final analysis, the Parker Pillar becomes an irrelevance. Of course, the fact that it did once exist is important. It destroys the Israeli thesis of intervisibility completely because Parker simply could not be, and never was, intervisible with BP 90; and of course it is important because it equally destroys both the Israeli locations for BP 91 down in the Wadi. But that apart, Parker is irrelevant because if you look at the terms of the Compromis and if one thinks about the application of the Compromis and the execution of the task assigned to this Tribunal by the Parties, Parker is irrelevant. Of course Israel's argument is that because in 1906 Parker was the final pillar, it therefore follows that BP 91(E) cannot be the final pillar. Now that, Mr. President, is a <u>non sequitur</u>. That does not follow at all. Certainly the Annex to the Compromis refers to the final Boundary Pillar No. 91. But then it goes on to identify the final Boundary Pillar as the Parties understood that in 1986 as being either one or other of the Israeli locations or BP 91(E). The Parties are bound by that Compromis; that is an international agreement, in solemn form. They agreed in 1986 that they would accept and require this Tribunal to decide that the final pillar contemplated by them in 1986 was to be one of those three locations and no other location. It is simply not open to Israel now to argue that the final pillar means something else, something different from what Israel has agreed to in the Compromis. [PVR 37]

Moreover, the Compromis must be interpreted in the light of the circumstances of its conclusion and the common intention of the Parties in 1986. That is why I

spent so much time trying to develop with you the state of knowledge of the Parties at that time; and at that point in time not only was Egypt in ignorance about the Parker Pillar but of course the actual site of the pillar had actually been destroyed by Israel. So how can Israel seriously argue that by the phrase "final pillar" in 1986 the Parties meant the Parker Pillar or the site of the Parker Pillar? [Tape No. 191] The Pillar had been destroyed many years before and the site had been destroyed by Israel. That would be like asking the Tribunal to do the impossible. To locate a pillar site which no longer existed. Yet in reality that is exactly what Israel is asking this Tribunal to do. To say the final pillar was or should be on the Parker site. And that is not only a physical impossibility because the site has gone, it is also a legal impossibility because that would be expressly forbidden by the terms of paragraph 5 of the Annex to the Compromis. That prevents this Tribunal from choosing a location other than a location advanced by one or other of the Parties. Indeed, paragraph 5 goes even further. It prevents the Tribunal from even addressing a pillar location other than the one specified in paragraph 1.

So, finally, Mr. President, I turn to Israel's real aim, which is to persuade this Tribunal to return a non-liquet. From what I have just said it follows that this is not a possible course for the Tribunal to adopt. It is precluded by paragraph 5. But you know even without paragraph 5 the aim now pursued by Israel will really be little short of outrageous. It would make nonsense out of this whole arbitration and it would be a flagrant breach of the joint commitment, the legal commitment, [PVR 38] a binding commitment to resolve this dispute fully and finally. Such an outcome to an arbitration of this kind would be without precedent. I believe we should all become the laughing stock of the world community and indeed any award of that kind would be a blemish on the long record of international arbitration. Above all, Mr. President, it would be a total injustice.

To return a decision of non liquet, this Tribunal would have to do four things. First, it would have to decide on the location of Parker and decide that Parker was the final pillar within the meaning of the 1986 Compromis and its Annex and not BP 91(E). Now I have suggested to you that that is simply not a possible interpretation of the common intention of the Parties given what they knew, given the state of their knowledge (certainly of the knowledge of Egypt) in 1986 when that Compromis was signed. Such an interpretation of the words "final pillar" could not possibly have been intended by the Parties and certainly not by Egypt. Secondly, the Tribunal would have to address Parker. It would have to determine

its location at the very least as being in a different location from 91(E). Now that would be contrary to the second sentence of paragraph 5 of the Annex which requires the Tribunal not to address pillar locations other than those listed by the Parties. Thirdly, the Tribunal would have to refuse to carry out the specific request of both Parties to select either the Israeli or the Egyptian locations for Boundary Pillar 91. That is the first sentence of paragraph 5. And fourthly, the Tribunal would have to ignore the stated aim of both Parties recorded in the Preamble of the Compromis to resolve this dispute fully and finally. Now, Mr. President, no sensible tribunal ignores the intentions of the Parties as reflected in the Compromis. And no sensible tribunal commits not one but three separate violations of the requirements the Parties have placed upon it in the Compromis. No sensible tribunal would willingly lend itself to such a [PVR 39] manifest injustice. Now, Mr. President, distinguished Judges, you are in our view a sensible tribunal and Egypt cannot and will not believe that you would engage in such manifest violations of the Compromis. Egypt is content to rely upon your good sense and your commitment to the arbitral process. Mr. President, that brings me to the end of my statement, no doubt to my relief and to yours. May I express my personal thanks to you all for your patience and courtesy and ask you to call upon the Agent, Ambassador Elaraby.

The President: Thank you Professor Bowett. Ambassador Elaraby.

Mr. Elaraby: Mr. President, distinguished Members of the Tribunal, as Agent for Egypt it falls to me to make the concluding speech and the submissions on behalf of the Government of Egypt. Professor Bowett has just summarized the evidence and arguments of the Parties. I now very briefly propose to identify those issues which in the view of my Government are at the very heart of the case. By confining myself to the essentials of the case, I will avoid wearying you at this very late stage with matters of detail and I hope I may assist the Tribunal in clarifying some of these issues.

Mr. President, I will start with two very important points. Two points which Egypt hopes that you, Sir, and the distinguished Members of the Tribunal, will bear in mind and always take into account while deliberating the case in the future months.

The first point, Mr. President, is that Israel has not, and I repeat has not, produced a single piece of evidence proving that there ever existed at any time a boundary pillar at 91(I)(east or west). Moreover, and

perhaps more important to our case here, Israel has not produced one single map, one single map to support its case about 91(I)(east or west). Even this map, Mr. President, the MFO map, the post-1982 Israeli maps do not reflect [PVR 40] Israel's positions as submitted before this Tribunal as they appear in the description cards which are Appendix A to the Annex of the Compromis.

The second important fact which Egypt hopes you will bear in mind, is that to always recall that Egypt's objective in this arbitration is to resolve fully and finally the dispute so that the status quo that exists, that prevailed prior to Israel's 1967 occupation of Sinai be fully restored. This is our only objective that led us to come to this arbitration. Mr. President, your task and the distinguished Members here, is quite clearly stated in the Compromis. I cannot believe that the phrase in Article II of the Compromis which I will not repeat again -- you have heard it so many times -- contains any ambiguity. Your task I submit, in all due respect, is not to locate the boundary, it is to decide the location of specific identified boundary pillars. Your task, Mr. President, I submit again, is certainly not to contemplate a redemarcation. Professor Bowett has most ably explained the meaning of paragraph 5 of the Annex. Both the Peace Treaty and the Compromis acknowledge and adopt as a point of departure that there is a recognized boundary and the evidence which has been placed before you, not only by Egypt but also by Israel, confirms beyond a shadow of doubt not only that such a recognized boundary exists but that the boundary line was fully and finally demarcated over 80 years ago. [Tape No. 192] The dispute is therefore confined to the location of these specified boundary pillars. At first sight, such a task might appear to be a simple task, but no-one who has read the written pleadings, or listened to the extensive oral arguments, could seriously say that your task is other than a complex and daunting one, entirely worthy to be entrusted to an arbitral tribunal of such distinguished personalities. [PVR 41]

Mr. President, I must, even at this final stage, say a few words about the drafting of the Compromis and the circumstances of its conclusion. Professor Bowett has said it very ably but I introduce also a personal element since I headed Egypt's delegation in these negotiations. I repeat again, Mr. President, that the Compromis was drafted on the basis of -- common to both Parties -- that the task of the Tribunal was to locate one boundary pillar beyond agreed BP 90. This was, in the terms of the Compromis in September 1986, when it was signed, the "final boundary pillar 91". The wording of the Annex to the Compromis entirely confirms this. No mention was made by Israel during the

negotiations of the Compromis of the extent of the changes made by Israel in the topography of the eastern cliffs overlooking Wadi Taba, or that the changes introduced by Israel included the destroying of a site of a Boundary Pillar. It actually, as we now find out, involves the total destruction of the presumed site of the Parker Pillar. The description cards filed by the Parties are entirely consistent with the conclusion that the choice for the Tribunal, so far as BP 91 is concerned, was a choice between BP 91(E) and the two locations which we accepted Israel to present this case with two locations. If and to the extent that Israel may have had secret reservations -- because we did not know about them -- secret reservations on this point, deriving of course, from their knowledge of the previous existence of a Boundary Pillar at the presumed Parker site, these reservations were not made in 1986. This is why, Mr. President, Egypt is now obliged to insist that Israel is legally estopped from advancing its "final pillar" argument on the interpretation of the Compromis.

The fact is, Mr. President, that the interpretation of the Compromis advanced by Israel would not only require the Tribunal to violate the Compromis, as Professor Bowett has just pointed out, but would also involve Israel in <u>three</u> [PVR 42] distinct breaches of its international treaty obligations towards Egypt and we take that very seriously, Mr. President.

<u>First</u>, Israel would be in breach of its agreement emanating from the Annex to the Compromis to treat the final pillar, for the purposes of this arbitration, which was decided upon in 1986, as being either BP 91(E) <u>or</u> either BP 91(I)(east or west).

<u>Second</u>, Israel would be in breach of its legal commitment that this dispute should be resolved "fully and finally". That legal commitment is contained both in the Preamble to the Compromis <u>and</u> in the Agreement of 25 April 1982.

<u>Third</u>, and perhaps I must add most significantly, Israel would be in breach of its legal obligation in the Peace Treaty of 1979 to withdraw its forces behind the recognized international boundary. I say this because it is the considered opinion of the Government of Egypt, without any doubt, that Israel's whole aim in securing a <u>non liquet</u> would be to stay in possession of Taba.

Mr. President, I cannot believe that this Tribunal could accept an interpretation of the Compromis which would entail such grave consequences.

Such an interpretation, Mr. President, would be wholly, if you allow me to say, absurd and unreasonable, and entirely incompatible with the requirement specifically written into Article 31 of the Vienna Convention on the Law of Treaties which in fact codifies a customary rule that a treaty must "be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". [PVR 43] Mr. President, the object and purpose of the Compromis was, as its Preamble confirms, and we have repeated it and I am afraid that we have to repeat it again, is to "fully and finally" resolve the dispute. "Good faith" has to be applied to the entire process of interpretation -- that is to say, good faith as an objective criterion in the light of the particular circumstances, not good faith as an abstract notion. What is required is a good faith interpretation of the provisions of the Compromis, which has to be reached in the light and on the basis of the circumstances prevailing at the time of its signature in 1986.

Mr. President, this leads me inevitably to the conclusion that the phrase "final Pillar No. 91" in paragraph 2 of the Compromis must be interpreted as referring to the final pillar contemplated by the Parties in 1986, and nothing else, that is to say, I repeat again, one of the pillar locations identified by either Israel as BP 91(I)(west) or BP 91(I)(east) _or_ by Egypt as BP 91(E).

Mr. President, with these comments I would like to read out Egypt's two formal submissions. They are in fact a re-affirmation of the submissions already contained in the Egyptian Rejoinder. They are as follows:

Submission One

That BP 91, identified in the Compromis as being the one remaining pillar on the recognized international boundary between Egypt and the Former Mandated Territory of Palestine following agreed BP 90, is at the location set forth in the Egyptian description card in Appendix A to the Annex to the Compromis and marked on the ground and is _not_ at either of the alternative locations set forth in the [PVR 44] Israeli description cards in Appendix A to the Annex to the Compromis.

Submission Two

That the remaining Boundary Pillars in dispute on the recognized international boundary (as specified in the Annex to the Compromis) are at the locations set forth in the Egyptian description cards in Appendix A to the Compromis and marked on the ground and are _not_ at the

locations set forth in the Israeli description cards in Appendix A to the Compromis.

These are Egypt's two submissions Mr. President.

Mr. President, it remains for me to thank you, Sir, and thank the distinguished Members of this Tribunal, for the patience and courtesy which you have shown in attending to the presentation of our case. Egypt, Mr. President, has full confidence in the determination of the Tribunal to uphold the rule of law and to see that justice is done. Thank you, Sir.

The President: Thank you Ambassador Elaraby. Now, the hearing is suspended until Thursday morning at 9h30. Thank you.